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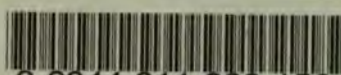
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HISTORICAL REVIEW

OF

THE LEGISLATIVE SYSTEMS

OPERATIVE IN IRELAND,

FROM THE

INVASION OF HENRY THE SECOND TO THE UNION

(1172—1800).

*John Thomas* BY THE RIGHT HON.  
J. T. BALL, LL.D., D.C.L.

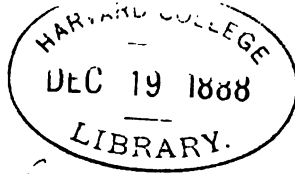
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## PREFACE.

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RECENT political discussion has attracted attention to the legislative systems operative in Ireland prior to its Union with Great Britain. If, however, we desire to ascertain what is recorded of them, and to examine their respective characteristics, we must proceed to search for the requisite facts through the entire series of events with which the general history of the country is concerned. There is as yet wanting a consecutive narrative which shall trace the succession of these systems to each other, the forms they respectively assumed, and their distinctive peculiarities. In the following pages it is sought to supply the deficiency. At the same time, it is intended also to consider the controversies connected with the claim made

by the English Parliament to legislate for Ireland, with the relinquishment of that claim in 1782, and with the Union of Great Britain and Ireland in 1800—excluding, however, from the last of these subjects questions which have been raised respecting the means employed to induce adoption of the policy of Union by the Irish Parliament, and also respecting the degree of support which, when proposed, this policy received outside Parliament, as such questions could not be satisfactorily investigated without a minute and lengthened examination of evidence, disproportioned to the limits proposed for this treatise.

*April, 1888.*

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# THE PARLIAMENT OF IRELAND.

## CHAPTER I.

### COUNCILS AND PARLIAMENTS OF IRELAND.

[1172-1613.]

**I**N the thirteenth century assemblies of a parliamentary nature were convened in Ireland by the kings of England. Records of writs or mandates to summon them have been preserved, dated as early as the reign of John (1199-1216): and it is probable that these continued a practice begun in the previous century by Henry II. Contemporary historians, however, mention only two instances of meetings for legislative purposes in Ireland under this monarch. One of these, composed of clerical persons, and concerned with the affairs of the Church, was held at Cashel; the other is said to have been at Lismore, for civil affairs, lay in character, although ecclesiastics may have attended it. By the former the discipline of the English Church was adopted for the Irish clergy; and to the latter is attributed

Origin of  
Irish Par-  
liaments.

the acceptance of English law, its members binding themselves by an oath to its observance.\*

They imitated English precedents.

Irish parliamentary assemblies, such as they were constituted under the English kings, were not continuances of similar institutions existing among the native inhabitants of the country. They were simply imitations of English precedents. The rulers who summoned them, regarding Ireland as a subordinate and dependent kingdom, repeated there what they were accustomed to at home.

Council of England.

The Council of England (as its legislative assembly was at first called) had from the Conquest been in a continual process of growth. To the archbishops, bishops, abbots, earls, barons, and knights, of which it was originally composed, were afterwards added tenants-in-chief. Under Henry II. its meetings became numerous, and the subjects in reference to which it was consulted were of increased importance. Improvement in the condition of the people was continually going forward; and the expansion of the Council kept pace with the development of society.

The first record that has been preserved to

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\* Whether Henry II. held a Council at Lismore has been doubted. Mathew Paris states that he did, and that the laws of England were then accepted. On the other hand, Giraldus Cambrensis makes no mention of any assembly at that place. The subject will be further considered in Note A of Appendix.

our time of the Councils called in Ireland after the death of Henry II.—during his reign there <sup>First Irish Council of John.</sup> are no records of any, unless that of Lismore be regarded as one—exhibits an example of the mode in which the English Council of the same date was reproduced, with additional classes of persons admitted. This was in the fifth year of John's reign. The writs profess to be to Archbishops, Bishops, Abbots, Priors, Archdeacons, Clergy, Earls, Barons, Justices, Sheriffs, Knights, Citizens, Merchants, Burgesses, and Freeholders, and all other the King's faithful in Ireland, informing them that an aid had been given to the King in England, and asking from them a similar grant.\*

There is no reason to think that to this Council, or to succeeding Councils in Ireland, <sup>Natives not invited.</sup> natives, unless in rare instances, were invited. The descriptions given of the persons summoned are inconsistent with the supposition. Neither is it probable that, if invited, the Irish would willingly have attended; for the state of society at that time presented an effectual hindrance to their joining with the Anglo-Irish for purposes of legislation or government.

It is true, that under Henry II., and from his

---

\* See Lynch's *View of the Legal Institutions, &c., established in Ireland during the reign of Henry II.*, p. 38. In the same work will be found other writs and mandates for Councils under John and Henry III., chaps. iii. and xi.

The chief-  
tains re-  
tain their  
independ-  
ence.

time, allegiance to the Crown of England was professed by a large proportion of the old chieftains of the country. But it was merely profession; there was no genuine sentiment of the kind. Neither subdued, nor reconciled to a foreign rule, these petty kings\* retained for all practical purposes their former independence. They ruled their own territories, and upheld within them the old customs and usages. Justice they caused to be administered by local tribunals, the jurisdiction of the King's Courts or Judges not being acknowledged. Peace and war between themselves they made as inclination prompted, without fear or respect for any superior authority. All their interests, habits, and sympathies differed from those of the English colonists. Had they united with the latter, they must have ceased to be princes, and become subjects.

Subjects  
submitted  
to the Irish  
Councils.

The same causes which confined the choice of members for the Councils to the Anglo-Irish restricted the Government in the subjects which it submitted for their consideration. For the most part they related to the support and authority of the Crown, or the welfare and advantage of the English colony. Under John and Henry III. Councils enacted that the English laws and customs should be in force in Ireland.†

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\* *Reguli* is the description both of Giraldus Cambrensis and of the author of *Cambrensis Eversus*.

† See Note B of Appendix.

Until the reign of Edward I. the constitution of the Councils in Ireland continued as it was under John. Then, about the year 1295, the principle of elective representation of the Commons was introduced; and, for a Council convened by Sir John Wogan the Deputy, not only lords spiritual and temporal were summoned, but the sheriffs of certain counties and the seneschals of certain liberties\* (as the counties palatine were termed), were ordered, the sheriffs in full county and the seneschals in full court of the liberty, to cause two of the better and more discreet knights of each county and liberty to be elected. The counties and liberties named were—*Counties*: Dublin, Louth, Kildare, Waterford, Tipperary, Cork, Limerick, Kerry, Roscommon; *Liberties*: Meath, Wexford, Kilkenny, and Ulster.† With this assembly Councils may be justly said to have expanded into Parliaments. And the assemblies which succeeded it were even better entitled to the appellation, as the classes of society represented were increased. In 1311 for one of them, also under Wogan, not only knights for counties, but citizens and burgesses for cities and boroughs

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\* A 'Liberty' or 'County Palatine' was under the rule of some great nobleman who nominated the sheriffs and administered justice, much like an absolute prince.

† See Appendix, Note C, for the account given of Wogan's Parliament in the *Liber Niger* of Christchurch Cathedral.



were directed to be returned; and in 1360 a further addition to the members from counties appears, separate representation being then given in some counties to such portions of the territories within their boundaries as were under ecclesiastical jurisdiction. These were known as the Crosses (*croceæ*), and the Crosses at this time named in the writs were the Crosses of Meath, Kilkenny, Wexford, and Tipperary.\*

Elective  
represent-  
ation of  
the  
Commons  
previously  
in Eng-  
land.

The introduction and growth of elective representation of the Commons in Ireland appears to have followed the introduction and growth of a similar procedure in England. Thus, in 1254, for an English Parliament, the election of knights from the shires was directed; in 1264, at Simon de Montfort's Parliament, representatives from cities and boroughs also attended; and in 1295 the summons of two knights from each shire, two citizens from each city, and two burgesses from each borough, may be regarded as having fixed a final plan of representation for English shires and towns.†

Irish Par-  
liaments  
subsequent  
to 1311.

The constitution of parliament which commenced in Ireland under Wogan was afterwards continued; thenceforward knights, citizens, and burgesses were returned to parliament; but the number of constituencies to return them varied,

---

\* The Counties of the Crosses had separate sheriffs.

† See Stubbs' *Constitutional History*, ed. 1883, vol. ii., pp. 132-3, 230-2.

as writs were not always sent to the same counties or towns. In like manner the number of bishops, peers, and superiors of religious houses summoned by name was not constant; there were sometimes but few of a class, and in at least one instance, while some peers were omitted, a few knights were cited by name.\*

The expansion of the parliamentary system did not lead to the removal of its previous exclusive character. Only the Anglo-Irish were for a long time recognised. The names of the persons elected by the Commons for either of Wogan's Parliaments have not been preserved; but the names of the persons who were summoned to his second (A.D. 1311), eighty-seven in number, are extant. They comprise many not noble; yet no name in the entire list indicates Irish descent.†

According to Sir John Davis (and he seems to be supported by such records as remain) the exclusion of the Irish from parliament lasted until the thirty-third year of Henry VIII. 'Before that time,' he says, 'we do not find any to have had place in parliament but the English of blood or English of birth only'; and for this he assigns two reasons. One of these was, that the countries

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\* See further as to the early Councils and Parliaments in Ireland, Note D in Appendix.

† The names of these persons as set out in Roll. Chief Rem. Dub. 3. 4 E 2, are printed by Lynch, ch. xi., p. 312.

of the mere Irish lay out of the limits of counties, and so they could send no knights: also that in their countries there were no cities or boroughs whence to send burgesses. The other reason was, that 'the State did not hold the Irish fit to be trusted with the counsel of the realm.'\*

Irish  
Chieftains  
attend a  
Parlia-  
ment, 33  
H. 8.,

The parliament called in the thirty-third year of Henry VIII. (A.D. 1541) was attended by Irish chieftains. One, who had been created a peer, Mac Gillpatrick, afterwards Fitz Patrick, Lord Upper Ossory, was certainly in the House of Lords; the other chieftains seem not to have voted, but to have expressed their assent. The object sought in procuring their attendance was to give greater authority to an Act which this parliament was convened to pass, whereby the title of 'Kings of Ireland' was conferred upon the Kings of England instead of their former title of 'Lords of Ireland.'†

Separation  
into two  
Houses.

At first all members of the Irish Parliament, whether Peers or Commoners, sat and deliberated together; afterwards there were two Houses—a House of Lords and a House of Commons—each debating and voting apart. When this separation first took place does not clearly appear; but it may with confidence be asserted that it was at

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\* These observations appear in Sir John Davis's Address, as Speaker of the Irish House of Commons, to Sir Arthur Chichester, which there will be occasion again to mention.

† See, as to the Parliament of 1541, Bagwell's *Ireland under the Tudors*, vol. i., p. 257, and Note E of Appendix.

some time subsequent to 1332, as that is the date of the earliest record which states a similar separation in the English Parliament.\*

So soon as we arrive at the period when in Ireland the two Houses formed distinct bodies, the House of Lords is found to consist of Lords Spiritual and Lords Temporal. The former were not merely the bishops, but also, until the Religious Houses were suppressed, the Superiors of some of these establishments.† In the House of Commons, besides knights from counties, and citizens and burgesses from cities and boroughs, some of the clergy, elected as clerical representatives from each diocese—termed Proctors—attended. Whether these Proctors could vote seems not to have been determined by any binding authority, until a statute of Henry VIII., which declared that they were mere counsellors and assistants.‡

The number of members of the House of Commons necessarily was small, since so was the

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\* See Stubbs' *Constitutional History*, ed. 1883, vol. ii., p. 393. Hallam, however, appears to date the separation of the Houses in England when voting earlier than 1332. *Middle Ages*, 9th ed., ii., 160.

† The names of the Religious Houses, whose Superiors were summoned to the House of Lords, are enumerated by Ware, *Antiq.* ch. 26—14 Abbots, 10 Priors.

‡ 28 Henry VIII., ch. 12. In the Statute-Book the numbers of the Acts in this parliament do not follow the order in which they were passed. This Act preceded the Supremacy Act, which is ch. 5. All its Acts are dated 1537, which is the year when it was dissolved, not when it met.

number of counties, and also the number of cities and boroughs. For parliamentary representation the twelve counties, whose formation has been generally, although it is not certain whether correctly, attributed to King John, were recognised. These were Dublin, Kildare, Meath, Uriel or Louth, Carlow, Kilkenny, Wexford, Cork, Waterford, Limerick, Kerry, and Tipperary; and to these on various occasions were added Roscommon, the Liberty of Ulster, and probably Connaught (regarded as one county or liberty). The cities were four, and, until the number of counties increased, the boroughs were not above thirty.\*

Increase of  
House of  
Commons.

According as additional counties were formed, new writs for the election of knights were issued. To John's twelve counties Henry VIII. added one, by dividing Meath into Meath and Westmeath; Philip and Mary formed two more counties, viz. King's County and Queen's County. During the reign of Elizabeth additional counties, sixteen in all, were constituted substantially as they are now, some being then altogether newly formed, and some being altered from former arrangements. These were Longford, Clare, Galway, Sligo, Mayo, Roscommon, Armagh, Monaghan, Tyrone, Coleraine or Derry, Donegal, Fermanagh, Cavan,

---

\* This was the number stated by Sir John Davis in the Address to Sir Arthur Chichester already referred to.

Down, and Antrim. The last in point of date of the counties was Wicklow, which was severed from what was then the county of Dublin soon after James I. came to the throne.\*

A record of the constitution of the last parliament of Queen Elizabeth (A.D. 1585), held under Sir John Perrot as Deputy, has been preserved. A reference to it will illustrate the progress of the House of Commons. The counties represented were twenty-seven, Tipperary being treated as two counties, viz. the county or liberty of Tipperary and the county of the cross of Tipperary; the cities were four, and the boroughs thirty-two. The county of Cork seems to have had three members; all the other counties, and every city and borough, had two members.†

For twenty-seven years after the Parliament of 1585, no parliament was called in Ireland. In the interval James I. had succeeded to the throne of England, and brought with him a policy which as regards Ireland was in many respects more enlarged than that of his predecessors. His object was to establish his own authority over its people, whether native or Anglo-Irish, and in return to treat all as subjects. He therefore wished that in the House of Commons of

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\* The dates and other incidents of the formation of the different counties will be examined more fully in Note F of Appendix.

† See farther as to this parliament—which is sometimes called Perrot's Parliament—Note G in Appendix.

the first Parliament which he summoned (A.D. 1613) the Irish districts should be represented, and that members of Irish race should be returned. At the same time, lest they should overpower the English interest, he increased the representation by a number of boroughs situate in Ulster, of which he had just before completed the Plantation, and which were in fact towns or villages where Scotch and English colonists had built a few houses and begun to establish themselves.

House of  
Commons,  
1613.

The number of members returned to the House of Commons in the first Parliament of James was 232, of whom 226 attended. Those who attended were divided into two parties—one, reckoned at 101 in number, was composed of Recusants (as the Roman Catholics who did not outwardly conform to the religion of the State were then called), and the other, which included all the rest of the members, was made up of persons Protestant by religious profession and zealous for the English interest, 125 in number.\*

Sir John  
Davis's  
Address,  
1613.

The superiority of this Parliament over all which preceded it has been not unjustly celebrated in an Address delivered to Sir Arthur Chichester by its Speaker, Sir John Davis. Then, for the first time, as he points out, 'Ulster and Connaught, as well as Leinster and Munster, had

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\* Leland's *History of Ireland*. Ed. Dublin: 1774; vol. ii. p. 447. Leland refers to a MS. in Lambeth Library.

come to have voices; and the English of birth and the English of blood, the new British colony and the old Irish natives, were all met together to make laws for the common good of themselves and of their posterities.\*

Subsequent parliaments differ from the Parliament of 1613 only in the greater number of persons entitled to sit in the two Houses. Additions to the House of Lords were caused by the creation of new peerages; and to the House of Commons by authorizing additional towns to return members. Ultimately the number of representatives of the people to Parliament was fixed at 300, being 64 for the thirty-two counties, 234 for one hundred and seventeen cities and boroughs, and two for Dublin University. This was the number in the Parliament of 1797, the last Irish Parliament ever summoned.

It is proper, before leaving consideration of the mode in which the Irish Parliament was constituted, to notice that restrictions were imposed upon its action by legislation of its own, in a statute which formed one of the Acts that, from the Deputy under whose rule they were passed, are known as Poyning's laws. This Act provided that parliament should not be holden in Ireland until the king's lieutenant and council had notified the king,

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\*The Address of Davis is printed in full in the Appendix to the second volume of Leland's *History of Ireland*.



under the Great Seal of that land, the causes and considerations, and all such Acts as to them seemeth should pass in the same parliament, nor until such causes, and Acts, and considerations had been affirmed by the king and his council to be good and expedient, and licence to summon parliament had been given under the Great Seal of England. By an amending Act of Philip and Mary the same process could also take place during the sitting of parliament, in case events happened to occur that might render immediate measures necessary.\*

Practice  
under  
Poynings  
Law.

Under the provisions of these Acts, it was for a long time supposed to be necessary, if statutes were designed to be submitted for enactment to the Irish Parliament, that the initiation of them should begin with the Privy Council in Ireland. But in time (it is said in the parliament which dates after Lord Strafford's removal from Ireland) a practice began of framing not a Bill, but heads of a Bill, in either House of the Irish Parliament, and then sending the heads to the Lord Lieutenant or Deputy and the Irish Privy Council. By them, if the heads were affirmed, they were sent on, it might be with alterations, to the English Privy Council, who generally referred their consideration to the English Attorney and Solicitor-General. If returned as a Bill under the Great Seal of England to the Irish Council,

---

\* 10 Henry VII. ch. 4, and 3 and 4 P. and M. (Ir.)

this Bill was sent to the House in Ireland which originally proposed the heads, and then, in order to become law, it went through the usual course of procedure and required to be read three times and passed through Committee in each House. When a Bill came over under the Great Seal of England, it might be either accepted or rejected by the Irish Parliament, but it could not be altered.

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## CHAPTER II.

CLAIMS OF THE ENGLISH PARLIAMENT TO LEGISLATE  
FOR IRELAND.

Controversies as to the jurisdiction of the English Parliament.

THE last chapter traces the growth of the Irish parliamentary system through a period of more than four hundred years. At its close the parliament of Ireland had attained a permanent character, and had begun to make laws for the whole country. Whether, however, it was exclusively entitled to such jurisdiction, or whether, on the contrary, the Parliament of England had not a paramount or concurrent legislative authority in Ireland, were, at that time, and had long before become, questions agitated not only in parliament, but before judicial tribunals. Controversies in reference to these subjects continued until the year 1782, when they finally received solution. Their history will henceforward occupy our attention, and in its course bring under review the proceedings and discussions which they occasioned. At present only the position of the questions in debate at the time we have reached will be considered.

Conflicting claims of the

In the reigns of Henry IV., Henry V., and Henry VI., the English and Irish Parliaments

advanced conflicting claims respecting their jurisdiction in Ireland. The former passed Acts expressly naming Ireland, and designed to bind its inhabitants. The latter, on the other hand, declared that statutes made in England should not be of force in the kingdom of Ireland unless they were allowed and published in that kingdom by parliament.\*

The first of these Acts of the English Parliament was the Act (4 Henry V. ch. 6), which prohibited prelates in Ireland of the Irish nation collating persons of Irish birth, or bringing with them Irish rebels to the parliaments, to know the secrets and state of Englishmen.† The most important of them was the Staple Act (2 Henry VI. ch. 4), which provided that the repair of wools, wool-fells, leather, and other merchandize of the staple, not only from England

English  
and Irish  
Parliaments.

4 Hen. V.  
ch. 6.  
(Engl.)

Staple  
Act.  
(Engl.)

---

\* The *Statutum Hiberniæ* (14 Henry III.), respecting the inheritance of females, and the *Ordinatio pro statu Hiberniæ*, are by some alleged to be earlier instances of Acts of the English Parliament to bind Ireland than any above mentioned; but they seem to be ordinances of the King, not Acts of Parliament. See Note H of Appendix.

† Grattan, in his elaborate argument against the claims of the English Parliament, refers to five of its statutes as the principal of those in which Ireland was expressly named, viz. 4th of Henry V., above mentioned; 1st of Henry VI., relative to ecclesiastical benefices; 19th of Henry VII., relative to Perkin Warbeck's confederates; 8th of Henry VII., regarding tithes; and the 2nd of Henry VI., or the Staple Act.—*Speech in the Irish House of Commons*, 22nd Feb., 1782.

and Wales, but from Ireland also, should be to Calais, where the King's staple was, and not to any foreign port, on pain of forfeiture of the goods.

10 Hen.  
IV.; 29  
Hen. VI.  
(Irish);  
and in  
1459.

The Acts of the Irish Parliament which are referred to as claiming exclusive legislative jurisdiction over Ireland are, one in the reign of Henry IV., and two in the reign of Henry VI. Under what circumstances the first (10 Henry IV.) and the earliest of the two last (29 Henry VI.) were passed does not appear; the third was enacted by Parliament when Richard Duke of York, to escape the persecution of the partisans of the House of Lancaster in England, fled to Ireland.\* This Prince had been at an earlier period Lord Lieutenant, had then returned to England, and in 1459 reappeared, assuming to act in his former capacity. Under his rule—for his authority was recognised by the Irish Parliament—several laws were passed, all tending to

---

\* Neither the Act 10 Henry IV., nor the Act 29 Henry VI., is in the Statute-book, or in any existing Roll. From the statements in the controversial tracts, attributed to Bolton, Mayart, and Molyneux, which are afterwards noticed, it appears that Sir Richard Bolton saw the records of them or transcripts in the Treasury at Waterford, and that this was stated in an edition of the Irish statutes edited by him. Grattan (22nd Feb., 1782) assumes their existence and validity. The 10 Henry IV. is sometimes cited as of an earlier reign. The Act under the rule of the Duke of York is mentioned by Leland, *Hist.*, vol. ii., p. 42 (referring to Rot. Can. H., Henry VI.), by Hardiman, *Statute Kilk.*, p. 4, and Richey, *Hist.*, p. 231.

assert the independence of Ireland. It was declared that laws to bind must be freely admitted and accepted of in parliament; that the Irish had a right to coins for themselves different from the coins of England; and that, as Ireland had a Great Seal, the Irish subjects were not bound to answer writs not issued under its authority.

It is here not undeserving of observation that before this controversy began there were occasions when, with a view to the Parliament of England legislating for Ireland, representatives from the latter were returned to the English House of Commons. A remarkable instance of such returns being enforced occurred near the end of the reign of Edward III., when this King, failing to obtain money from Ireland, had recourse to a parliament at Westminster, attended by representatives from Ireland—not, however, without protests from some of the electoral bodies which sent them over.\*

Before the Act of the twenty-ninth of Henry VI. some of the English judges had incidentally, in the determination of a case,† discussed the power of the English Parliament to tax Ireland, and had resolved against it. Judges Fortescue and Portington, it is reported, laid down that if a subsidy of a tenth or fifteenth be granted in England, this should not bind them in Ireland, Portington

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\* See Appendix, Note I.

† ‘Pilkington’s Case,’ *Year Book*, 20 Henry VI., fol. 8.

assigning as a reason that the Irish did not receive commandment by writ to come to the English Parliament; and this, says the reporter, was not denied by Markham, Yelverton, or Ascough, three other judges present.

Case of  
Mer-  
chants of  
Water-  
ford.

In the reign of Richard III. the question of the power of the English Parliament over Ireland was again considered by the English judges—upon this occasion not in respect of taxation, to which peculiar considerations apply, but for general legislative purposes. The case which thus led to a judicial examination of the subject arose upon the Staple Act, the nature of which has been already explained. In breach of its provisions, certain Irish merchants, residing at Waterford, consigned wool, not to Calais, but to Sluys, in Flanders; and an indenture was made between them and the master of the ship to transport the goods to Sluys. The ship, however, on the voyage put into Calais; and thereupon Sir Thomas Thwaites, treasurer of Calais, finding the ship was really chartered for Sluys, seized and confiscated the goods. The merchants petitioned the King to have their goods returned to them, and the petition was referred to the English judges for consideration—one question before them being whether the Staple Act had force in Ireland. The judges are reported, when the matter was first debated before them, to have pronounced their opinion that the Irish were not bound by the statutes of England,

‘because the land of Ireland had a parliament and all other courts of its own; as in England, and did not send representatives to the English Parliament.’ A distinction, however, seems to have been drawn between statutes relating to lands and affairs in Ireland and statutes relating to matters to be done out of it.\*

This judgment follows the line of argument previously adopted in the judgment of Justice Portington, which has been already referred to. Both judgments, it is remarkable, seem to treat as a received principle, that to entitle a legislative assembly to tax or legislate for a people it ought to contain representatives from them.

The judgment follows Portington.

Notwithstanding, however, the weight which this line of reasoning might be expected to have, the judges in ‘The Merchants of Waterford’s Case’ themselves receded from their first decision, and when it was brought before them a second time, they were induced to come round to the opinion

Second judgment in the Merchants of Waterford’s Case.

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\* ‘Et ibi (in the Exchequer Chamber) quoad primam quæstionem dicebant quod terr. Hibern. inter se habent Parliament. et omnimodo cur. prout in Anglia, et per idem Parliamentum faciunt leges et mutant leges et non obligantur per statuta in Anglia, quia non hic habent milites Parliamenti; sed hoc intelligitur de terris et rebus in terris illis tantum efficiendo; sed Personæ illæ sunt subjecti Regis, et si sint tanquam subjecti erunt obligati ad aliquam rem extra terram illam faciend. contra statut. sicut habitantes in Calesia, Gascoignie, Guienne, etc. dum fuere subjecti; et obedientes erunt sub Admiral. Angl. de re facta super altum mare.’—*Year Book*, Ric. III., fol. 12.



of Hussey, the chief justice—who was then for the first time present—that statutes made in England did bind the people of Ireland.\* The grounds of this change in the views of the judges have not been recorded.

Act 10 H.  
VII. (Ir.)

These conflicting decisions made by the same judges unquestionably rendered uncertain, even in England, what was, or might ultimately be declared to be, the law in respect of the operation of English statutes in Ireland. It was therefore thought advisable to obtain from the Irish Parliament an Act to make English law, as it existed at that time, of force also in Ireland. This was the second of the statutes which Poyning obtained from the Irish Parliament, and which are known by his name. By this it was provided that all statutes lately made (interpreted to mean all previous statutes) concerning the common and public weal of England should be used and executed within Ireland, in all points, according to the tenor and effect of the same.†

Calvin's  
Case.

The Act of Poyning now referred to related only to English statutes then existing: it had no effect upon future legislation. The question of the jurisdiction of the English Parliament thereafter to make laws for Ireland remained in the same position as it was before. The subject

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\* 'Le chief justice disoit que les statutes faits en Engleterre liera ceux d'Irland.'—*Year Book*, 1 Henry VII., fol. 2.

† 10 Henry VII., ch. 21 (Ir.).

did not again come for consideration before the English judges until immediately after James I. succeeded to the throne of England, when, in the celebrated case of the *Post-nati* (reported as 'Calvin's Case'), the status of persons born in Scotland after the union of the crowns of England and Scotland had to be decided by the English judges. There the relations of the king's subjects in Ireland to the crown of England was referred to, as calculated to illustrate the immediate subject under examination; and, according to the judgment in the case which is reported, it was laid down that 'albeit Ireland was a distinct dominion, yet the title thereof being by conquest, the same by judgment of law might by express words be bound by Act of the Parliament of England.'\*

The judgment in 'Calvin's Case' (which was the composition of Lord Coke, one of the judges who decided it), after stating that it had been a question who was the first conqueror of Ireland, and after referring to a charter of Edgar, King of England, claiming dominion over all adjacent islands, including by name Ireland, declares that it is to Henry II. the honour of the conquest of Ireland is to be attributed, as it was wholly conquered in his reign, and that his style by reason of this was: *Rex Angliæ, Dominus Hiberniæ, Dux Normanniæ, Dux Aquitaniæ, et Comes* Effect of  
Conquest.

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\* Coke's *Reports*, 'Calvin's Case.' Part vii., fol. 17.

Andigaviæ; King of England, Lord of Ireland, Duke of Normandy, Duke of Aquitaine, and Earl of Anjou. The reason why conquest has the effect attributed is explained to be, that the conqueror hath *vita et necis potestatem*, power over life, and, as a less exercise of dominion, may alter the laws of the kingdom he has subdued. But it is admitted that when he does alter the laws and establish a parliament, they cannot be again altered without the assent of parliament.

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### CHAPTER III.

#### PARLIAMENT OF IRELAND.

[1613-1688.]

THE report of the judgment in 'Calvin's Case' <sup>Calvin's Case acquiesced in.</sup> was published soon after it had been pronounced. The observations with reference to Ireland contained in it may have been followed at that time by comments from the Irish Judges and the Irish Parliament, but, if so, these comments have not reached us. So far as appears, it was not until thirty years later that the question how far the English Parliament had jurisdiction in Ireland was revived. It then became a subject of discussion in the Irish Parliament under the following circumstances.

About the end of the year 1640, soon after Strafford was formally recalled from the government of <sup>Revival of controversy.</sup> Ireland by Charles I., the Irish House of Commons, imitating the course pursued at the same time by the English House of Commons, engaged in an inquiry as to what grievances required to be redressed, and what rights were proper to be asserted. Among other subjects which attracted their attention was the legislative authority of the Irish Parliament. In aid of their proceedings they

applied to the House of Lords to have questions upon various subjects submitted to the judges; and having induced this to be done, they inserted among the queries proposed one which was in the following words . . . 'whether the subjects of this kingdom (Ireland) be a free people, and to be governed only by the common law of England and statutes in force in this kingdom?' The communication to the Lords asking the questions to be submitted to the judges was accompanied by a declaration that the subjects of this kingdom (Ireland) were firm, loyal, and dutiful subjects to his Most Excellent Majesty (Charles I.), their natural liege lord and king, and to be governed only by the common laws of England and statutes in force in Ireland; and also by a statement that it was not by reason of any doubt or ambiguity in the premises, but for manifestation and declaration of a clear truth, that the judges were consulted.

Declara-  
tion of  
Commons.

After some time the judges considered the questions; and they returned answers to them, which were expressed in cautious language. The Commons, discontented with the answers, had a conference with the Lords. At this, a Roman Catholic barrister of eminence, a member of parliament, Patrick Darcy, advocated the views of the Commons. In the end, the Lower House resolved to embody its own ideas upon the questions that had been sent to the judges in a series of resolutions. Accordingly, when it

proceeded to carry out this intention, it was declared, among other matters . . . that the subjects of his Majesty's kingdom of Ireland are a free people, and to be governed only according to the common law of England, and statutes made and established by Parliament in Ireland, and according to the lawful customs of the same.\*

The declaration that the people of Ireland are a free people was, very probably, aimed at the idea of conquest, as put forward by the judgment in 'Calvin's Case.' The subject had been referred to during the impeachment of the Earl of Strafford, which was then recent. A statement of this minister, to the effect that Ireland was a conquered country, seems to have provoked resentment; and one of the articles of his impeachment alleged . . . 'that the realm of Ireland, having been time out of mind annexed to the Imperial Crown of England, and governed by the same laws, the Earl (being Deputy in that realm), to bring his Majesty's liege subjects into a dislike of his Majesty's Government, and intending the subversion of the fundamental laws and settled government of that kingdom, and the destruction of his Majesty's liege people there, did declare and publish—that Ireland was a conquered nation; and that the king might do with them what he pleased.' Strafford, in reply,

Reference  
to the idea  
of con-  
quest at  
Strafford's  
trial.

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\* *Nelson*, vol. ii., pp. 573-584, and see also Leland's *History of Ireland*, vol. iii., ch. ii.

defended the proposition that Ireland was a conquered country as being true.

Adventurers' Act.

To assist the proceedings against Strafford, delegates were sent by the Irish House of Commons, and it is probable that this particular charge was suggested by them, since it is most unlikely that the English House of Commons would of itself bring forward what might tend to weaken its authority over Ireland—an authority which the English Parliament was so far from surrendering, that immediately afterwards it passed an Act—the Adventurers' Act—which professed to dispose of the lands of the disloyal in Ireland in favour of any persons who would advance money to put down the rebellion of 1641.

Complaints of Confederate Catholics.

The Adventurers' Act infringed upon the resolution of the Irish House of Commons, affirming the exclusive legislative jurisdiction of the Irish Parliament. It was also itself most unpopular, since it proposed to bring new owners of land into Ireland. It increased among the Irish generally, and especially among the political party known as the Confederate Catholics, the desire to uphold the rights of the Irish Parliament. And when their agents met the commissioners of King Charles I., they complained not only of the nature of the Adventurers' Act, passed against persons who were unsummoned and unheard, but also of the English Parliament legislating for Ireland, as from the time

of Henry II. there had been Irish Parliaments, whose Acts, they alleged, alone bound the king's Irish subjects.\*

During the discussions of this period a treatise <sup>Bolton's  
Treatise.</sup> of great learning and acuteness was composed to defend the rights claimed by the Irish Parliament. It was entitled 'A Declaration setting forth how and by what means the Laws and Statutes of England from time to time came to be in force in Ireland.' It was not at that time printed; but a manuscript copy of it was brought under the notice of the Irish House of Lords on the 16th of April, 1644; and by that House copies of it were ordered to be made. Its composition was attributed to Sir Richard Bolton, Lord Chancellor of Ireland (1638–1650); but by some writers reasons have been suggested for thinking that its real author was Patrick Darcy, the eminent Roman Catholic barrister, to whom there has been occasion already to refer. The treatise was sent by the Lords to the Commons for consideration, by whom it was referred to 'those of the long robe in that House,' while the Lords were requested to ask the judges also

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\* Charles I., when instructing Ormonde for negotiations with the Catholics, wrote that the Irish had much to say for themselves in point of being commanded by orders of the Parliament of England, or being obliged by a statute, until confirmed by their own parliament, and that this had been the notion of the English kings and councils.—Carte's *Ormonde*, Ed. 1851, vol. ii., p. 442.



to examine it; and this was done in order, as it was stated, that the judges and the members of the Commons of the long robe might 'privately take into consideration the book.' Of what afterwards happened there are no accounts extant; and affairs of more urgency soon occupied the attention of both Houses.\*

Confisca-  
tion of  
land in  
Ireland.

When a few years after these events the Commonwealth had triumphed, and its rule was established over Ireland, it did not summon any parliament there. It proceeded of its own authority to decide who were to be punished for rebellion, and what forfeitures of land were to be enforced. And on the 12th of August, 1652, a statute was passed by the Parliament, embodying its decrees. The result was that vast territories were held to be confiscated, and at

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\* Manuscript copies of the treatise attributed to Bolton are preserved in the Library of Trinity College, Dublin, along with an answer to it by Mayart, described as Sergeant and Second Justice of the Common Pleas in Ireland. Both were first published in 1749 in Harris's *Hibernica*. Harris thinks Darcy the author of the Declaration, founding his opinion upon the resemblance between its arguments and the topics and observations of Darcy when, as has been already mentioned, he appeared before the Lords. A copy in Trinity College has marked upon it (in a different handwriting from the body) 'by Sir Richard Bolton.' Harris gives in his Preface the proceedings in the Irish Parliament in relation to the treatise. A manuscript copy of the Journals of the House of Lords of that time is preserved in the Library of Trinity College, Dublin.

the disposal of the State. A redistribution of them was made without the sanction of any Irish legislative authority. The persons who had advanced money on the faith of the provisions of the Adventurers' Act were thought to have the first claim, and then the soldiers of the Parliamentary army in Ireland. Grants were made to persons of these classes in Leinster, Munster, and Ulster; and Connaught was reserved for such of the former owners and occupiers as were to be dispossessed in the three other provinces.\*

The omission to summon a parliament in Ireland continued during the entire interval from the death of Charles I. to the Restoration. The English Parliament at that time assumed sole and absolute dominion over the country. So much respect was, however, paid to the representative principle, that when 'the instrument of government,' under which Cromwell became Protector, was framed (A. D. 1653), a right to return members was granted both to Scotland and Ireland, thirty being the number fixed for each kingdom; and on this basis the first parliament called under 'the instrument' was constituted.†

Irish  
members  
admitted  
to the  
English  
Parlia-  
ment.

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\* See Note K of Appendix.

† The proceedings for the return of members to this parliament from Ireland are stated in Leland's *History of Ireland*, vol. iii., p. 398.

Acts of  
Settle-  
ment and  
Explana-  
tion.

At the Restoration the separation of the Parliaments of England and Ireland was renewed, each being summoned by itself as an independent body, without representatives from any country except its own. No provision was then made to define the relation of these assemblies to each other, or to make more certain than had formerly been the case how far the Parliament of England was entitled to make laws for Ireland. Controversy, however, did not arise upon the subject, for in neither country were the Acts of the Commonwealth considered binding: and the Irish Parliament could, without interference, review the distribution of landed property, which was effected under the sanction of what was deemed an usurped authority. The advances of the Adventurers had, it was thought, helped the English cause, since through their means Ireland was reduced into subordination; to the same result Cromwell's soldiers had contributed: but other claims were also to be acknowledged. Parliament had treated as rebels not merely enemies of the English authority, but loyalists, and even persons who had remained neutral during the civil war, both Protestant and Roman Catholic. In the end, a compromise between all the various interests concerned was approved, and statutes, to carry out the compromise, known as the Acts of Settlement and of Explanation, were passed by the Irish Parliament without any concurrence

or assistance from the Parliament of England. These statutes, and deeds of grant or awards and certificates of right given under their provisions by competent tribunals, became the foundation of title for the proprietors then introduced upon, or confirmed in, the lands which were the subject of allocation.\*

That the English Parliament of Charles II. abstained from interfering with the redistribution of land which during his reign was arranged in Ireland did not arise by reason of its having relinquished the legislative claims of former English Parliaments; on the contrary, the claims were persisted in, and among other enactments of this period which related to Ireland the cultivation of the tobacco plant there was prohibited.†

Tobacco  
Acts.

It is, however, to be observed that much of the legislation, in relation to Ireland, of the English Parliament under Charles II. was according to every view of the rights of that Parliament within its jurisdiction. Its Acts excluded Irish ships from the Plantations and Colonies of England, and Irish cattle and sheep from English ports. These laws were harsh, ungenerous, and, upon sound economical principles, indefensible; but they cannot be charged with being *ultra*

English  
Acts relat-  
ing to  
Ireland.

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\*The Acts were 14 & 15 Car. II. ch. 2, and 17 & 18 Car. II. ch. 2 (Irish).

† 12 Car. II. ch. 34; 15 Car. II. ch. 7; 22 & 23 Car. II. ch. 26 (English).

*vires*, since over its own plantations, colonies, and ports, England must be held to have had dominion.\*

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\* Beside the Tobacco Acts, the following Acts of the English Parliament of Charles II. affected Ireland directly or indirectly: 12 Car. II. ch. 18; 13 & 14 Car. II. ch. 11; 18 Car. II. ch. 2; 32 Car. II. ch. 2; 12 Car. II. ch. 4; 22 & 23 Car. II. ch. 4, and ch. 26. The 15 Car. II. ch. 7, by not naming Ireland, excluded its ships from advantages given to English ships. See as to this Act, and the other Navigation Acts, note L of Appendix.

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## CHAPTER IV.

### PARLIAMENT OF IRELAND.

[1688-1700.]

NONE of the Acts professing to bind Ireland, <sup>Before William and Mary English statutes not in conflict with Irish.</sup> passed by the Parliament of England before the reign of William and Mary, came in conflict with any statute of the Irish Parliament relating to the same subjects. They were, down to that time, concerned with matters not dealt with by the latter Parliament. And so long as both England and Ireland acknowledged the same king this was likely to continue to be the case, since Poynings' Law gave the king and Council in England control over the legislation of the Irish Parliament, which could not, without licence and assent under the Great Seal of England, either meet or make laws.

In 1689, however, the relations between the <sup>Irish Parliament of James II.</sup> Parliament of England and a Parliament which then met in Ireland were of a character without previous precedent. These assemblies did not, like other English and Irish Parliaments, move apart in separate lines: they came in direct collision with each other. One of them had accepted William and Mary as King and Queen: the other

was convened by, and came together to support, James II., in whose place the new king and queen were substituted.

Act 1 W.  
& M. ch. 9  
(English).

In 1690, a number of Acts having been previously passed by James's Irish Parliament, and no Irish Parliament having as yet been summoned by William and Mary, the Parliament of England interfered by legislation in reference to Irish affairs, and enacted a statute which, after reciting that the Parliament convened by James in Ireland was an unlawful assembly since it was not called by the rightful Sovereign, declared that all the Acts and proceedings of the Parliament were null and void.\*

Statutes of  
James's  
Parliament.

This proceeding on the part of the English Parliament was induced by the nature of the statutes which were enacted by James's Parliament. They were, in the highest degree, oppressive to the Protestant portion of the people of Ireland, and, if allowed to be acted upon, they would, it was foreseen, effect a social revolution there, and probably banish from the country the Anglo-Irish and Scotch colonists.†

Repeal of  
Acts of  
Settle-  
ment and  
Explana-  
tion.

Of the statutes of James's Parliament, the most important was one which was entitled, 'An Act for repealing the Acts of Settlement, Explanation, Resolution of Doubts, and all Grants,

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\* 1 William and Mary, ch. 9 (English).

† See, as to James's Parliament and its Acts and proceedings, Appendix, note M.

Patents, and Certificates pursuant to them or any of them.' Under its provisions the proprietors, or descendants of proprietors, who had been deprived of their lands by the Commonwealth, were to be reinstated in them. The owners and occupiers who had been substituted in their place under the Acts of Settlement and Explanation were to be removed; such of them as derived from the original grantees by descent or devise or by marriage were to receive no compensation; but purchasers were to be, as it was expressed, reprised out of the lands which the adherents of William and Mary had forfeited or would forfeit for their rebellion against James. These provisions would have operated upon about 2,400,000 Irish acres of land possessed by Protestants.\* There were other clauses also affecting the ownership of land, but they would have had small effect; moreover, this statute enacted a confiscation of the estates of those who, since August, 1688, had been in arms against James, or corresponded, or kept

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\* Sir William Petty, in his *Political Anatomy of Ireland*, computes that Roman Catholics and sequestered Protestants had, before 1641, owned 5,200,000 acres. These being, he says, 'seized by the usurpers,' in the final arrangements the Roman Catholics recovered back about 2,340,000 acres; the new Protestants and Churches Additions, 2,400,000 acres; and 'of a more indifferent nature' there were, he considers, about 460,000 acres. See pages 2 and 4 of *Political Anatomy*.



intelligence with, or went, contrary to their allegiance, to dwell or stay among those who rebelled against him, or were aiding or abetting them, but not so as to affect (except in some exceptional cases) remainders or reversions limited to innocent persons.\*

Act of  
Attainder.

In addition to these provisions, directed to create forfeitures of property belonging to the adherents of William and Mary, others, with the same object, were introduced into another Act, which attainted more than two thousand persons, specified by name, unless they came in by certain days which were appointed, and appeared before the tribunals prescribed.†

Act 7  
Wm. III.  
ch. 3  
(Irish).

The legislation of the English Parliament to defeat such statutes as these was, as might be expected, popular with the Irish Protestants. The state of the country prevented for some time an Irish Parliament being summoned by William and Mary. It was not until 1695 that an Irish statute declared the Acts and proceedings of James's Parliament null and void, and added that the records of them were to be burned.‡

Other statutes of the English Parliament re-

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\* This Act was printed at London, 1690.

† 'An Act for the Attainder of divers Rebels, and for Preserving the Interest of Loyal Subjects': London, 1690. It is also printed in the Appendix to Archbishop King's *State of the Protestants of Ireland under King James's Government*.

‡ 7 William III. ch. 3 (Irish).

lating to Ireland were less acceptable. An Act of the Irish Parliament (17 & 18 Car. II.), which disabled clergymen from holding benefices both in England and Ireland, was suspended, and a new oath of supremacy was imposed upon ecclesiastical persons of the Established Church. These measures were unpopular with the clergy, but were not even noticed in the Irish Parliament.\*

Acts 1 W.  
& M. & 3  
W. & M.  
(English).

Indeed at this time, and during the reign of Anne, the Irish Parliament seems to have conceded to the English Parliament its claim to legislate for Ireland, so far as acquiescence can concede such a claim. It made no protest when the right assumed was exercised. The House of Commons, however, did on one occasion show a disposition to assert privileges similar to those possessed by the English House of Commons. In 1692 it demanded that it should initiate money bills; but this demand failed, in consequence of the judges, when consulted, deciding against it.†

Acquies-  
cence of  
Irish Par-  
liament.

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\* See the Acts 1 W. & M. sess. 1, ch. xxix., and 3 W. & M. sess. 1, ch. ii. (both English). Archbishop King, in a letter to the Bishop of Worcester, dated 3rd February, 1699 (cited by Mant in his *History of the Church of Ireland*, vol. ii., p. 100), complains of both these Acts, and instances them among the causes which created discontent in Ireland in William's reign. The legislation in the first of these Acts being a repeal of an Irish Act is, he says, 'absolutely new to us, there being no such precedent before.'

† See Lecky's *History of England in the Eighteenth Century*, vol. ii. p. 418.

The people discontented.

But submission to the authority of the English Parliament was confined to the Parliament, and did not extend to such portion of the people of Ireland as concerned themselves with public affairs. The traders, manufacturers, and middle classes (generally of English or Scotch race, and Protestants) were dissatisfied that any assembly not national should have power to make laws for them, and so be enabled to hinder the growth of their prosperity. Discontent on this ground continued to increase until, about 1698, proceedings took place in the English Parliament which much inflamed its violence. Enactments to hinder the exportation of wool from Ireland, lest its use might assist the foreign manufacturers in their competition with the English in this branch of trade, were at that time suggested. These measures, if passed, would have been in the highest degree detrimental to Irish interests, for the country produced much wool of a quality adapted for making cloth. Had the English Parliament, it was asked, the right to inflict such injury upon Ireland?

Molyneux's Case of Ireland.

The discontent of the period, its apprehension of what the jealousy of English commerce might ordain, and its reluctance to admit an authority in the English Parliament which had been on previous occasions repudiated in Ireland, soon found an exponent. In 1698 appeared a treatise, entitled, *The Case of Ireland's being bound by Acts of Parliament in England Stated*. This

work at once attained celebrity; and there is no doubt that at the time, and long afterwards, it largely influenced the opinions of the educated classes in Ireland. It was the composition of William Molyneux,\* then one of the members for the University of Dublin in the Irish Parliament, who was highly esteemed, both in England and Ireland, no less for his moral qualities than his scientific attainments.

Molyneux's book, immediately upon its publication, was brought under the notice of the English House of Commons, and by it referred to a Committee for examination. The Committee reported against the treatise, and, in conformity with their report, the House voted that 'the book was of dangerous tendency to the Crown and people of England, by denying the authority of the king and people of England to bind the kingdom and people of Ireland, and the subordination and dependence that Ireland hath and ought to have upon England, as being united and annexed to the Imperial Crown of that realm.' It also directed that the book should be burned by the common hangman. These resolutions were followed by an address from the House to the king, in which were contained the charges against

Proceed-  
ings of  
English  
House of  
Commons.

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\* Locke, in his *Essay on the Human Understanding*, has recorded his esteem for Molyneux (Book ii., ch. 9, s. 8). Some of the reasoning in Molyneux's treatise can be traced to the influence of Locke's writings.

Molyneux's book. At the same time it complained that the Irish Parliament had, when re-enacting a statute of the English Parliament 'for the security of his Majesty's person and Government,' made alterations in it. Another address mentioned the attempts of some persons in Ireland to shake off dependence. To these representations William answered that he would take care what was complained of by the Commons should be prevented and redressed.\*

Both English and Irish Parliaments prohibit export of wool from Ireland.

Notwithstanding the arbitrary conduct manifested on the part of the English Parliament, and the consequent dissatisfaction prevalent in Ireland, the Irish Parliament not only acquiesced in the demands of the English Parliament, but passed an Act which imposed additional duties upon the export of Irish woollen manufactures. It also submitted, without remonstrance, to a subsequent English statute, which prohibited the export of wool and woollen manufactures from Ireland, except to certain specified places in England, on pain of forfeiture of the goods and ship, and of a penalty of £500 for every such offence.† The Irish Act was temporary, the English Act permanent. Their effect was

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\* Macaulay, *History of England*, ed. 1861, vol. v., p. 59. Molyneux died October, 1698. Macaulay thinks that 'had Molyneux lived a few months longer he would have been impeached.'

† See Act 10 Wm. III. ch. 5 (Irish); Act 10 & 11 Wm. III. ch. 10 (English), and note N of Appendix.

entirely to extinguish the woollen manufacture in Ireland, and also to depress the agricultural interest by leaving no market outside Ireland, except England, open for Irish wool.

In 1700, also under William III., the English Parliament again interfered with affairs in Ireland. The lands forfeited by the adherents of James II. were granted by William to his generals and favourites. The English Parliament passed an Act resuming the lands from the grantees. Under the authority of this Act, and of a subsequent Act also of the English Parliament, without any statute or order of the Irish Parliament, all this property was sold and conveyed to the purchasers by Commissioners appointed for the purpose.\*

English  
Parlia-  
ment re-  
sumes  
Irish for-  
feitures.

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\* The first Act was 11 & 12 Wm. III. ch. 2 (Engl.); the subsequent one was 1 Anne, ch. 21 (Engl.).

## CHAPTER V.

THE TREATISES OF BOLTON, MOLYNEUX, AND  
MAYART.

Treatises  
connected  
with the  
contro-  
versy.

AN account of the controversy respecting the right assumed by the Parliament of England to legislate for Ireland would be imperfect, if it were confined merely to events, and left unnoticed the views and opinions of the eminent persons who took part in it. Molyneux's treatise, which has been mentioned in the last chapter, and the treatise attributed to Sir Richard Bolton, which was before the Irish Parliament in 1644,\* are the most celebrated writings in opposition to the jurisdiction claimed. An answer to Bolton by Mayart, one of the Justices of the Common Pleas in Ireland, contains the arguments of most weight upon the other side. Discussion of the subject, at a later date, became involved with the conflicts of political parties in Parliament; but, so far as reasoning, little was added to what may be found in these treatises. The period at which we have now arrived seems therefore convenient for an ex-

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\* See page 29, *supra*.

amination of the mode in which the question raised was treated.\*

Bolton (for in speaking of the treatise of 1644 Bolton's treatise. I shall treat him as the author, notwithstanding the doubt which, as already mentioned, is entertained whether its composition was not due to Darcy) argues against the right claimed by the English Parliament. He lays down as the basis of his reasoning that Ireland is a separate kingdom. In order to prove this he refers to the fact that Henry II. in his own lifetime granted to his son John the authority of king in Ireland, which continued under Richard I. John held, Page 1. he seems to suggest, a regal position in Ireland as one kingdom, while his father and brother held a similar in England as another.† That, under such circumstances, the Common Law of Page 3. England should be the Common Law of Ireland he explains by the ordinances which, under John and Henry III., were, as we have seen, made in Ireland to enact that the law of England should

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\* The editions of the treatises of Bolton, Molyneux, and Mayart, referred to by the pages noted on the margin of this chapter, are of Bolton's, in Harris's *Hibernica*, part ii., published in Dublin, 1750; of Molyneux's, the edition of 1698, the only one published in his lifetime; of Mayart's, the edition published in Harris's *Hibernica*, part ii.: Dublin, 1750.

† Bolton exaggerates the authority conferred upon John. But the proposition he seeks to deduce from it, viz. that Ireland was a separate kingdom, does not depend upon the view taken of that point; it is admitted on other grounds in the judgment in 'Calvin's Case.'



Bolton's  
treatise.

Page 4.

be in force there.\* When the Common Law was thus introduced, he holds it followed as a necessary consequence that if a statute was passed in England declaring the Common Law, defining it in some doubtful or ambiguous point, this statute *proprio vigore*, without any re-affirmation by the Irish Parliament, would be law also in Ireland. Of this sort, he says, were *Magna Charta*; the *Statutum Hiberniæ*, respecting the inheritance of females (14 Henry III.); the statute *De Proditionibus* (25 Edward III.). But it was only statutes of this character that came into use without being confirmed by Irish legislative authority. A statute which was (as he expresses it) 'introductory and positive, making new laws, or anyways altering, adding unto, or diminishing the ancient Common Law,' would not be binding in Ireland until such time as it had been enacted by Act of Parliament in Ireland: that is, if it were later in date than the ordinance of John, for the words of that ordinance were wide enough to bring in along with the Common Law any then existing English statutes. Examples are then collected of English laws which were again enacted by the Irish Parliament. Others, he admits, were accepted, for which there were not extant Irish statutes confirming them; but this he accounts for by the loss of records, frequent 'in the troublesome and distempered times

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\* See page 4, *supra*.

which have been in Ireland.\* That an English Act might be confirmed by an Irish, and the latter not be forthcoming, he shows by an instance. The statutes of Merton, Marlebridge, Westminster (1st), Westminster (2nd), and Gloucester, were all re-enacted for Ireland by an Irish Act (13 Edward II.); but the latter was for a long time not known to exist, and it was only recently an exemplification of it had been found in the Treasury at Waterford. In support of his views, he refers to the decisions of the English Courts, which there has been occasion to state in chapter ii. The plea in 'Pilkington's Case,' he observes, was a plea founded upon an Irish Act, and it was prefaced by a recital 'that the land of Ireland, time beyond the memory of man, hath been a land separated and severed from the realm of England, and ruled and governed by the customs and laws of the same land of Ireland.' 'Pilkington's Case' and 'The Merchant's of Waterford's Case' were authorities for the necessity

Bolton's  
treatise.

Page 5.

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\* Harris, in an *Essay on the Improvement of the History of Ireland*, published in his *Hibernica*, part i.: Dublin, 1747 (p. 149), states that the Rolls of the Chancery in Ireland from 1172 to 1300 (a period of 128 years), were burned along with Mary's Abbey, where they were kept. Another chasm, he says, occurs in those of the first twenty years of Henry VIII. (except for the sixth year). It is also to be noted that even of the statutes of which records are preserved little more than a fourth have been printed—most of those, however, are unimportant. (See Hardiman's edition of the *Statute of Kilkenny*, p. iv. n.)

Bolton's  
treatise.

Page 12.

of an Irish Act to bind Ireland. With respect to the opinions expressed against the views he was advocating, he suggests that Chief Justice Hussey, when he said that English statutes bound Ireland, might, while using general words, have meant statutes like that relating to the Staple at Calais, which was then in question ; and that if conquest had (which he does not seem to deny) the effect attributed in 'Calvin's Case,' the effect ceased when the laws of England were given, since such as they were when given they would continue until altered by Parliament. These arguments from precedent and authority are supported by enumerating inconveniences which must result from a contrary theory. If England could make laws for Ireland, of what use were Irish Parliaments? For four hundred years they had been summoned, and upon this supposition it must be held to have been nugatory and superfluous to call them. Again, what stability of legislation would there be? At any moment England could abrogate all the existing laws, and might pass enactments the most opposite. The Parliaments of England and Ireland were then held (he says) at one and the same time ; and if they should happen to pass contradictory statutes, which were the king's subjects to obey? Moreover, natural equity and justice were against the claim of the English Parliament. 'It standeth not (he observes) with the rule of reason and politic government that the liberties, laws, and estates of those of the king-

Page 13.

dom of Ireland and of their posterities, should be bound by any laws or statutes made in England, whereunto they are not in anyways made privy or parties.' Wales, when 'incorporated to be a member and party of the realm of England, and to be inheritable to its laws,' had members allowed it in the Parliament; and the same occurred with the county palatine of Chester. Also the claim was against the nature of a Parliament, for it made the Irish Parliament a subordinate institution, and yet Parliament was *suprema et altissima curia*, and therefore not subject to the control of any other jurisdiction.

Molyneux, who is later in date than Bolton, goes over much of the same ground. He had evidently seen the treatise of the latter (not in print, for it was not then published, but in some of the copies which the Irish House of Lords had caused to be made of it),\* and he derived from it assistance in dealing with the legal topics connected with the subject. He has, however, arguments entirely peculiar to himself. Thus he denies the assertion, made in 'Calvin's Case,' that Ireland was a conquered country. Prelates, he says, kings and chieftains in Ireland, did homage to Henry II., but without having been vanquished by him in any battle. What occurred was 'an entire and voluntary submission of all the civil and ecclesiastical states.' Afterwards, rebellions

Bolton's  
treatise.

Page 14.

Moly-  
neux's  
treatise.

*Probably  
and*

Page 13.

\* See page 29, *supra*.

Moly-  
neux's  
treatise.

- were put down; but to put down rebellion is not conquest. Even if there were conquest, it would not prove the claim of the English Parliament; for it gives, he contends, no power over those who conquer along with the conqueror; and so the native Irish who aided Henry II., and the Norman adventurers who preceded him, were entitled to retain the freedoms and immunities of free-born subjects. Nor are the conquered wholly at the mercy of the victor, for his power is only over their own lives and liberties, not over their estates or posterity. Any other idea would apply to war the principles on which we may act towards rebels. Besides, in the case of Ireland, the consequences supposed to flow from conquest were, he alleges, waived by treaties and concessions of the English kings. This occurred first at the Council of Lismore, when the laws of England were introduced into Ireland, and as part of them 'the freedom of Parliaments to be held in Ireland as they were held in England.' He regards the proceedings at this Council as equivalent to a compact between Henry II. and the people of Ireland, that they should enjoy the like liberties and immunities, and be governed by the same mild laws, both civil and ecclesiastical, as the people of England. Henry, also, by a document called *modus tenendi parliamentum*, directed how these Parliaments were to be held. John and Henry III. confirmed the English laws and

customs to the Irish.\* The latter uses the remarkable expression that he wishes the Irish to enjoy the liberties granted by himself and his father for England. But, exclaims Molyneux, the liberties of Englishmen are founded on the universal law of nature that ought to prevail throughout the whole world, of being governed only by laws to which consent is given by representatives in Parliament.† In explaining how, if this were so, laws of the English Parliament were in force in Ireland, he follows Bolton in holding that these were either declaratory of the Common Law, or re-enacted in Ireland; but adds to Bolton's suggestions that some of these laws were made in English Parliaments to which members were returned from Ireland:‡ and that such as were so made, 'might reasonably be of force there, because they were assented to by its own representatives.' Instances of this kind, he says, manifestly show that the King and Parliament of England would not enact laws to bind

Molyneux's  
treatise.  
Page 44.

Page 48.

Page 95.

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\* See as to the Council of Lismore, the *modus tenendi parliamentum*, and the ordinances of John and Henry III., Notes A and B of Appendix.

† So also, after showing that, under an Act of James I., all in England are, through representation, deemed to be personally present in Parliament, Molyneux asks, Are we to be denied this birthright of every English subject, by having laws imposed on us, when we are neither personally nor representatively present?

‡ See as to the English Parliaments for which Irish representatives were returned, Note I of Appendix.

Moly-  
neux's  
treatise.

- Ireland without the concurrence of representatives from that kingdom. Hence he infers, that if the Parliament of England is to bind Ireland, the latter country ought to have its representatives in it. 'And this,' he then observes, 'I believe we should be willing enough to embrace: but this is an happiness we can hardly hope for.'\* . . . Against this reasoning the English legislation for Ireland of William and Mary ought not, he thinks, fairly to be relied upon, for it was acquiesced in, owing to peculiar circumstances, and in the hope of having it re-enacted when a regular Parliament could be called for Ireland; nor, were it otherwise, will he admit that acquiescence, or even alienation, can give away rights of this character. Disposing thus of the arguments from conquest and precedent, he refers to another topic brought forward in 'Calvin's Case,' viz. that as an appeal lay from the Irish Court of King's Bench to the same Court in England, Ireland must be a subordinate country; and he suggests that this right of appeal may have originated in an Irish Act of Parliament, then lost, and that, even if not, yet subordination of a Parliament does not necessarily follow from subordination of a Court. Observations follow upon other arguments which were brought forward from

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\* This passage is said to have been left out in an edition of Molyneux's treatise published in 1782, long after his death. —See Ingram's *Legislative Union*, p. 12.

the opposite side. One of these was that by expenditure to carry on war and put down rebellion England had purchased Ireland. What right could expenditure give beyond a claim to be repaid? Another was, that Ireland was a colony, and the mother country is always held entitled to make laws for a colony. But Ireland, he reasons, cannot be regarded as a colony. It is a separate kingdom. The king is King of Ireland, just as he is King of England and King of Scotland. 'Is this agreeable to the nature of a colony?' He does not style himself King of Virginia, of New England, or of Maryland.

Mayart (as his treatise was designed to answer that attributed to Bolton) reviews the entire range of legal precedent, authority, and argument travelled by the latter. He controverts the assertion that in the lifetime of Henry II., by any authority conferred on John or otherwise, Ireland was made a distinct government, so that England was but a pattern. Ireland was, and is, he says, a member of England, united to it, and as a part and province of it governed. This, he thinks, is expressly declared in statutes which he cites. Thus the Act of Appeals (28 Henry VIII., ch. 6) calls 'the land of Ireland the King's proper dominion of England, united, knit, and belonging to the imperial Crown of the same realm'; and it then asserts that this Crown of itself, and by itself, is fully, wholly, entirely, and rightfully endowed and garnished with all power, authority, and pre-

Molyneux's  
treatise.

Page 148.

Mayart's  
treatise.

Page 34.



Mayart's  
treatise.

eminence, sufficient to yield and render to all and singular subjects of the same full and plenary remedies in all causes of strife, debate, &c. So also the Act of Absentees (28 Henry VIII., ch. 3) describes Ireland as 'the King's land of Ireland'; the Act of Supremacy (28 Henry VIII., ch. 5) says that 'the land of Ireland is depending and belonging justly and rightfully to the imperial Crown of England'; and the Act of Faculties (28 Henry VIII., ch. 9) states that 'the King's land of Ireland is his proper dominion, and a member appending and rightfully belonging to the imperial Crown of England, and united to the same.' Coming from this topic to the second assertion on which, he says, Bolton grounds his case, viz. that a new law for Ireland requires to be passed by an Irish Parliament, he asks, Why is this so, when it is admitted that a declaratory English law binds Ireland? It is one and the same power that makes declaratory and new laws. Also in practice statutes not merely declaratory were in force, although not affirmed in Ireland. And this was the case even with the statutes re-enacted; since they were obeyed in the interval between their being passed in England and being enacted in Ireland. And for this he refers to the statutes of Merton, Marlebridge, and Gloucester, which were received and executed in Ireland before the 13 Edward II. (Irish), mentioned by Bolton, confirmed them. Of this he adduces evidence from extant records. The same

Page 40.

Page 61.

he alleges to be true for a long period subsequent, Mayart's treatise. referring to cases which he holds establish the fact. The right claimed by the English Parliament is in analogy with rights exercised by the English Courts in Ireland, which have had their judgments Page 81. (of which he gives examples) executed there. The alleged necessity of representation of Ireland in the Parliament of England, he suggests, is disproved by the fact that before Wales and Page 90. the county palatine of Chester had representatives in it, statutes were enacted to bind both. So also Calais had been legislated for by the English Parliament, although no member was ever sent from that town. Assuming that the Irish Parliament did by express statutes repudiate the legislative claim of the English, such Page 98. denial cannot annul a right if it existed; and whether there was or was not the right must be determined by other considerations than the assertion of the party to be affected by its exercise. In like manner to the other inconveniences suggested by Bolton he offers answers or considerations to abate their force; and in conclusion points out that, for political reasons, it was Page 131. indispensable that the English Parliament should have power to make laws for Ireland, since otherwise, however judicious the measures which the king might propose to introduce in that country, it would be possible for the Irish Parliament to hinder them from ever being brought into operation.

## CHAPTER VI.

THE CLAIM OF THE ENGLISH PARLIAMENT TO  
LEGISLATE FOR IRELAND CONSIDERED.

Legal decisions as to legislative authority in Ireland.

THE first legal decision favourable to the jurisdiction assumed by the English Parliament in Ireland was upon the second hearing of 'The Merchants of Waterford's Case.' What reasons (if any) were assigned by the Judges who pronounced it we do not know, for none have been reported. 'Calvin's Case' did not arise out of circumstances which themselves raised the question, and therefore was not a decision upon it; but the judgment incidentally discussed the subject, and laid down authoritatively that the English Parliament had a right to make laws for Ireland, and that it necessarily had the right, because Ireland was a conquered country.\* In order, however, validly to exercise this jurisdiction it was admitted that the intention to bind Ireland should be declared by express words; for the paramount Legislature, in its ordinary

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\* See for 'Calvin's Case,' p. 22, *supra*; and for 'The Merchants of Waterford's Case,' p. 21, *supra*. The part of the judgment in 'Calvin's Case' which relates to Ireland is at fol. 17 of part vii. of Lord Coke's *Reports*.

proceedings, cannot be supposed to have subordinate dominions in contemplation.

The proposition affirmed in the judgment in 'Calvin's Case,' that conquest gives to the nation which prevails a right to make laws for the people it has subdued, was from that time very generally acknowledged among legal authorities.\* Blackstone, however, accompanies his support of it by an explanation. He assumes that what is called 'right of conquest' is but another name for a compact either expressly or tacitly made between the conqueror and the conquered people: that if the latter will acknowledge the victors for their masters, the former will treat them for the future as subjects and not as enemies.†

Accordingly, when objections began to be made to the judgment, they took the direction of impeaching its statement of facts rather than its law. Ireland, it was said, was not a conquered country. Some years, however, seem to have elapsed before this was suggested. The language of the judgment was in accord with the notions of its own time. From a very early period 'conquest' had been used in Irish records and statutes to describe the mode in which

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\* 'A country conquered by the British arms becomes a dominion of the king in right of his crown, and therefore necessarily subject to the Legislature, the Parliament of Great Britain.'—Lord Mansfield, in 'Hall v. Campbell' (A.D. 1774). Cowper's *Reports*, 208.

† *Commentaries*, Introduction, s. 4, vol. i.

Henry II. acquired dominion in Ireland. Indeed, according to some writers, Henry, from the first, in imitation of William I. in England, took the title of Conqueror, *Conquestor Hiberniæ*.\*

Whether  
Ireland  
was con-  
quered.

Like many other controversies respecting important questions, subsequent discussion of the subject was more engaged in examining the proprieties of phrases than the realities which they represented. These, if we confine attention to them, are free from doubt. Henry II. did not subdue the Irish in actual conflict: their liberties were not struck down in any disastrous battle, as the liberties of the Anglo-Saxons were at Hastings; but this prince, reputed the most powerful of his time, brought with him to Ireland an army which, although not large, was larger than, owing to disunion among the Irish people, there were the means of resisting: and so he obtained, from the fear and prudence of the native kings

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\* Molyneux admits that Henry did call himself Conquestor (*Case*, ed. 1719, p. 8). Davis, whose *Discoverie* was written to show that, until the reign of James I., Ireland was never entirely subdued, says the conquest of Ireland was spoken of by many writers. The celebrated Statute of Kilkenny (3 Edward III.) begins, 'Come a la conquest de la terre Dirland' (whereas, at the conquest of the land of Ireland). In the appendix to Hardiman's edition of this statute, an abridgment of a statute passed at Dublin (2 Henry IV.), A.D. 1410, is printed, which begins, 'That Holy Church enjoy their liberties, &c., used since the conquest of this land.' And an Act, 32 Hen. VI., has the expression, 'from the conquest of Ireland by Henry Fitz-Empress.' (Leland, ii. App. n. B.)

and chieftains, the same admission of supremacy as might have been expected at the conclusion of a successful war. Such events may not, in strictness of speech, amount to conquest; but for the purposes of the judgment in 'Calvin's Case,' and so far as the authority and rights therein attributed to conquest, they cannot fairly be distinguished from it.

Of late years the advocates for the Parliament of England have preferred to found its claim to legislative power upon the fact of colonization rather than upon conquest. In the case of a colony, the mother country has been generally admitted to have a right to make laws for the subjects who emigrate. This being so, it is then urged that England did plant a colony in Ireland, and that only its interests were the objects of her care. If her Parliament legislated for Ireland, it was solely with a view to serve the Anglo-Irish; the natives were neglected, nor would they, if laws had been made for them, have obeyed them.\* But can this be regarded as a complete statement of the case? Does it not omit circumstances material to be considered?

In Ireland natives and colonists were subjects of one and the same kingdom. The King of England was at first Lord and afterwards King of Ireland. Theoretically, his authority in either

Supposed  
effect of  
coloniza-  
tion in Ire-  
land.

Effect at-  
tributed to  
coloniza-  
tion ex-  
amined.

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\* Macaulay, commenting on Molyneux's treatise, adopts this line of reasoning in his *History of England*, vol. v., p. 56.

capacity extended to the whole island; practically, it reached far beyond the districts inhabited by the colonists; for in Irish parts of the country it confiscated territories, and was strong enough to set over them Anglo-Norman lords. The English laws which were passed in relation to Ireland named all, and not part of, the kingdom, and at least such as related to trade were designed to affect the whole people without distinction. Moreover, after the reign of James I., neither theoretically nor practically, for legal purposes, was distinction made between colonist and native: the same laws bound both, and were enforced among both. Colonization of a part of a country affords but a narrow basis for legislative jurisdiction over the whole.

Was there  
compact?

Whatever, however, may have been the rights which conquest or colonization were adequate to confer upon the Crown or Parliament of England, it is obvious that these were capable of being relinquished or modified either by treaty or voluntary concession: nay, that even usage might exercise an important influence over them. Hence controversy respecting the authority of the English Parliament did not confine itself to abstract principles: it was fought out as ardently upon the question whether there were binding arrangements in reference to the subject between the kingdoms of England and Ireland. The occasions when it was suggested that such might have taken place were the Council at Lis-

more, under Henry II., where the laws of England are said to have been accepted, and Councils under John and Henry III., where the laws and customs (*leges et consuetudines*) of England were confirmed or enacted for the people of Ireland.\* But the utmost that can, by the widest latitude of inference, be deduced from any recorded proceedings of these assemblies does not extend beyond the introduction into Ireland of the English system of Councils to assist the Sovereign; and this might have been effected either with or without a superior legislative authority being conceded to an English Council or Parliament.

The truth is that the relations which were originally recognised between England and Ireland and their respective Parliaments did not arise out of any consideration of abstract reasonings, or any contracts or ordinances to create or define them. They grew out of circumstances, and were moulded by the exigencies of the time and occasion. Henry II. and his immediate successors, both in England and Ireland, entertained high notions of their own prerogative: they found, and acted with, parliamentary institutions in the former country; they gained assistance from them there. Henry probably—

Why  
compact  
unlikely.

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\* See as to the Council of Lismore, p. 1, *supra*, and Note A of Appendix; and as to the Councils of John and Henry III., p. 4, *supra*, and Note B of Appendix.



his successors certainly—introduced a similar system in Ireland, seeking to strengthen their own influence by obtaining from the Anglo-Norman Knights and Nobles, who had established themselves in the country, assent to their policy. If a Council were called, these kings named the persons who should be summoned to attend. They had, therefore, no reason for apprehending opposition. Hence it was wholly unnecessary to make provision for assistance in the government of Ireland from another legislative assembly. There was then as little need to confer upon some external authority control over the Irish Councils. It is most unlikely that anything of the kind was done.

Interests  
of the Eng-  
lish and  
Anglo-  
Irish at  
first the  
same.

Nothing to alter the original state of affairs occurred for a long period. It was the interest of the Irish Parliament, composed of Anglo-Irish, to uphold the power of the Crown of England in Ireland: it was the interest of England to aggrandize the colonists, on whose sympathy and allegiance she could count. With this community of interests the two kingdoms and the two Parliaments had no reason for interfering with each other upon any matter.

After-  
wards their  
interests  
conflict-  
ing.

When first it began to be perceived that the interests of the English and of the Anglo-Irish were not necessarily identical is uncertain. Under Henry V. and Henry VI. we clearly see the idea manifesting itself in action. English statutes naming Ireland, and intended of them-

selves, without any affirmation by the local government, to bind Ireland, were then passed.\* England determined to uphold its own interests, and legislation by its Parliament afforded the only means through which this could be accomplished.

An examination of the most important of the laws made at that time for Ireland by the English Parliament—the Staple Act of Henry VI.—will illustrate the motives which induced it to interfere. The statute made Calais the sole mart for wool and certain other merchandise which was specified, if they were exported abroad. The object of the legislation is plain. Calais then belonged to England, and was inhabited by many English merchants. Trade, when directed there, would be wholly under the control of the English Government; also, it would enrich the colonists dwelling in the town. The measure was, therefore, clearly advantageous to England. It was as obviously against the interest of Ireland, whose merchants desired access to all the Continental ports, and not merely to one in the hands of English rivals. Its confirmation by an Irish Parliament, unless coerced, was not to be expected. But to make the enactment effective, Ireland as well as England should be subject to its provisions. Hence the English Parliament, if the policy approved was to be carried out, must

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\* See pages 16, 17, *supra*.

expressly include Ireland in whatever statute it passed, and the English Government must enforce the statute when enacted.\*

29 Hen.  
VI.

At the time, however, when the English Parliament thus came forward with an explicit demand to legislate for Ireland, the Irish Parliament had been long enough in existence to recognise its own strength. From the accession of Henry VI. it was gaining increased confidence, for civil war in England weakened the power of the Crown, and diminished its ability to attend to or restrain what went forward in Ireland. Accordingly, before the close of this king's reign, an Irish declaratory Act affirmed that statutes made in England were not of force in the kingdom of Ireland, unless they were allowed and published in that kingdom by its Parliament.†

Merchants  
of Water-  
ford's  
Case.

As might be expected, when such adverse claims to jurisdiction were asserted, the question of right involved in them was soon raised before legal tribunals. Irish merchants transgressing the provisions of the Staple Act, pleaded in defence that they were not bound to obey a statute made by an English Parliament. In order to a satisfactory decision the matter came for adjudication at too late a period. Lapse of time

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\* See page 20, *supra*.

† 29 Henry VI., as stated in Bolton's treatise (p. 4), from the Exemplification in the Treasury at Waterford. The Staple Act was 2 Henry VI. The litigation by the merchants of Waterford upon the Staple Act was 2 Richard III.

then surrounded the beginning of Irish legislation with obscurity. Many records of important events and transactions had wholly perished: such as remained were often imperfect. The early annalists made no allusion to the subject. Inquirers, deprived of guidance from precedent or history, turned to abstract principles; but if abstract principles were applicable, there was no evidence to show that those which were at this time suggested had previously been acted upon or even recognised.

Under these circumstances the controversy between the English and Irish Parliaments, as to the legislative jurisdiction of the former, was not to be solved by judicial tribunals. From the time when the disputes excited by Molyneux's treatise died away the subject began to be considered more upon political, and less upon legal, principles than it had previously been. Until eighty years later the question continued to be debated. Then a final settlement of the matters in dispute was effected through means of express legislation, induced by a series of events which are now to be narrated.

## CHAPTER VII.

## PARLIAMENT OF IRELAND.

[1700-1719.]

Parlia-  
ment of  
Scotland.

**D**URING the discussions in William's reign respecting the legislative jurisdiction which the English Parliament asserted, the position of the Scottish Parliament was cited to illustrate what was claimed for Ireland. The King of England was King of Scotland, just as he was King of Ireland; but the Parliament of Scotland was wholly independent, and the Parliament of England made no pretence to a right of making laws for Scotland, as it did for Ireland. This was a necessary consequence from the circumstances under which the Scottish people first became subjects of a King of England. James the Sixth, King of Scotland, succeeded on the death of Queen Elizabeth to the English Crown. His acquisition of an additional royal title could not affect the laws or institutions of his native country. Among the latter was, and had long been, a Parliament, as distinct from, and as unconnected with, the Parliament of England, as if it were a Parliament in France under a French king.

Nevertheless, discontent with English legislation was during the last years of William not less Discontent in Scotland. deep and extensive in Scotland than in Ireland; for although the admission that an English Parliament had no jurisdiction over the former country saved it from such laws as the Act relating to Irish wool and woollen manufactures, and prevented trade at home or with foreign countries being meddled with, it afforded no protection whatever against the monopolising policy of the English Parliament in reference to the colonies and dependencies of the Crown of England. Goods for these places could no more be carried in Scotch ships than in Irish. And although the Scotch had a right to colonize unoccupied places, English jealousy so interfered with its exercise, that the right was practically of no use. Scotch settlers, in 1698, at the Isthmus of Darien (a place which the English had never occupied), when in need, were refused assistance from the English colonies.\*

The English Parliament was as little disposed to concede to Scotland as to Ireland any privileges of trade or commerce which it had power to withhold. But there were in the instance of the The laws regulating the succession of the Crown in Scotland and Ireland different.

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\* In consequence of the ungenerous treatment by the English of the Scotch emigrants at the Isthmus of Darien, William III. 'could not' (says Sir Walter Scott) 'wring from that kingdom one penny for the public service, or, what he would have valued more, one recruit to carry on his continental campaigns.'—*Miscellaneous Works*, vol. xxv., p. 48.

former country circumstances which rendered it difficult to avoid taking notice of its complaints, and adopting measures to remove causes of dissension, that did not exist in the case of the latter. These circumstances were connected with the law regulating the succession to the Crown of Scotland. While the Crown of Ireland was, in the language of the Act of the 33rd of Henry VIII., united and knit to the imperial Crown of England, so that whoever was King of England was necessarily King of Ireland: the Crown of Scotland was wholly separate and distinct from the Crown of England, and a different person might be entitled to each. James I., his son, and his grandsons, in succession, had been each King of England and King of Scotland; but this was because they were the rightful inheritors of both crowns. William and Mary also, and William were entitled to both crowns; and the Princess Anne, on William's death, would be entitled to both; but this was because the English Convention Parliament, and the Scotch Convention Parliament had conferred the English and Scotch crowns upon William and Mary, then on William, and then on Anne. But, after Anne, it was uncertain what would happen. The English Parliament had by an Act (12 and 13 William III., ch. 2) entailed the Crown of England, in the event of Queen Anne's death without issue, upon Sophia, Electress of Hanover, granddaughter of James I., and her issue; and if this princess and

her issue took under the limitation the Crown of England, each in succession would be, *ipso facto*, entitled to the Crown of Ireland. But no such consequence followed as to Scotland. It still remained for the Parliament of that kingdom to decide who, in this event, should succeed to the Scotch Crown.

Taking advantage of these difficulties in the way of the government of Scotland under an English Sovereign, the Scotch Parliament demanded commercial freedom; and in 1704 it passed an Act, called the Act of Security, which provided that, in case of Queen Anne's death without issue, the Parliament of Scotland was to choose a successor of the royal line and Protestant religion; but that the same person should be incapable of holding the crowns of England and Scotland, unless the Scotch were admitted to share all privileges of trade and navigation equally with the English people. It also contained a clause which enacted that the men of Scotland, capable of bearing arms, should be trained to the use of them by monthly drills.\*

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\* In 1703 the Act had been debated with fierce turbulence. 'We were,' says an eye-witness, cited by Scott, 'often in the form of a Polish diet, with our swords in our hands, or at least with our hands on our swords.' Parliament then passed the bill, but the Royal Commissioner would not allow it to become law. Parliament offended, refused supplies, shouting, 'Liberty before subsidy.' When it met again, Anne, on the advice of Godolphin, yielded, and gave her assent. (Sir Walter Scott's *Miscellaneous Works*, vol. xxv., pp. 56 and 58.)



Effect in  
England  
of the Se-  
curity Act.

The Security Act obliged statesmen in England to consider the position of their country in relation to Scotland. It was possible that under its provisions the Crowns of England and Scotland might be divided: it was certain that the people would be armed. A separate Crown with an armed people was an event which could not be contemplated without alarm. Only one measure was thought to be capable of affording complete security against the danger—an incorporating union of Scotland with England. Then there would be one kingdom, and one Crown.

Scotch  
Union  
Acts.

In 1707, not without much opposition and against great difficulties, Acts uniting the kingdoms of England and Scotland, by the name of Great Britain, were carried both in the Scotch and English Parliaments. The succession to the Crown of the united kingdom was, after Anne's death without issue, to remain to the Princess Sophia and the heirs of her body, being Protestants. All commercial and trading disabilities affecting Scotland were to cease. Thenceforward one Parliament, composed of English and Scotch Peers and Commoners, was to legislate for every part of Great Britain.

Motive in-  
ducing the  
Scotch to  
agree to  
union.

The principal motive which induced the Scotch Parliament to agree to the Act of Union was the equality with England in respect of trading and commercial advantages to which its provisions raised Scotland. Access to the English colonies and plantations was to be obtained only by

grant or concession from the English Parliament ; and except upon the terms of union the grant or concession would not be made.

Ireland had the same needs, and therefore the same motives to union, as Scotland, so far as colonial trade. Also it suffered, what Scotland could not, from English interference with its manufactures. The woollen cloth trade, when prosperous, had been suppressed. Union had therefore, in the case of Ireland, the additional recommendation that then a merely English Legislature could no longer interfere with its internal trade, or suppress its manufactures. Nations while separate will consult for their own interests. Nations united fuse into one and consult for the good of all.

Motives to induce Ireland to desire union.

Considerations of this character occurred to persons of influence in the Irish Parliament, while discussion concerning the union with Scotland was being carried on in England. But it was not then, nor owing to the example of Scotland, that the policy of having Ireland and England represented in one Legislature was first advocated. Under Edward III. Irish members had sat in an English Parliament. Under the Commonwealth the same took place. It was also seen that union would as effectively end the rivalry for jurisdiction of the English and Irish Parliaments as independence. There would be no more any assumption of superiority on one side, any feeling of inferiority on the other. Partnership confers equality.

Other motives to union.

Molyneux  
and Petty  
on union.

Before Swift appeared, no writers upon political subjects had more influence in Ireland than Molyneux and Sir William Petty. Both were advocates for uniting the Parliaments of England and Ireland. Molyneux, in his tract, had said that to have representatives in the Parliament of England was a happiness hardly to be hoped for.\* Sir William Petty, in his *Political Anatomy of Ireland*, expressed similar approval, and gave his reasons.† . . . 'If,' he said, 'both kingdoms were under one legislative power and Parliament, the members whereof should be proportionable in power and wealth of each nation, there would be no danger that such a Parliament would do anything to the prejudice of the English interest in Ireland; nor could the Irish ever complain of partiality, when they should be freely and proportionately represented in all legislatures.'

Irish  
Lords and  
Commons  
address  
Queen  
Anne in  
favour of  
union.

No long time elapsed after the first suggestion of union with Scotland in the English Parliament, before the reasons which recommended the adoption of the same policy for Ireland began to influence the Irish Parliament. In 1703, the House of Lords resolved that a representation should be made to Queen Anne to incline her to promote such an union with

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\* See page 52, *supra*.

† Edition 1719, p. 31. The *Anatomy* professes to be dated 1672.

England as might qualify the states of Ireland to be represented there.\* And in 1707, an address from the House of Commons to the Queen, congratulating her upon the union effected with Scotland, contained an emphatic prayer that God might put into her heart to add greater strength and lustre to her crown by a yet more comprehensive union.†

But union was not then to be. Anne and her English Ministers received these addresses with cold civility, and during the remainder of her reign treated them with neglect. In taking this course they acted in conformity with the sentiments of the mass of the English people, who in the instance of Ireland as well as of Scotland, regarded with apprehension the admission of members of a different nationality to their Parliament, and were jealous of allowing another people to share in every commercial privilege and advantage that they themselves enjoyed. Union was likened in both cases to an

The suggestion of union discouraged by Anne and her Ministers.

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\* Journals, ii., p. 20. The most perfect account of the proceedings of this period to obtain an union will be found in Froude's *English in Ireland*, vol. i., pp. 302, 303.

† Sir Richard Cox, Lord Chancellor of Ireland in Anne's reign, was one of those who supported the proposed union. He pointed out that it was especially desirable in a country like Ireland, inhabited as it was by several nations, interests, and religions. (See his letter to Lord Nottingham, cited by Froude.) Cox was distinguished for literary as well as legal attainments. His *Anglicana Hibernia* is well known as a valuable contribution to the history of Ireland.

inferior or dependent person being taken into partnership, and thus being raised to an undeserved elevation.\* In Scotland, as has been pointed out, political necessity overcame these prejudices; but in the instance of Ireland, whose legislative power was subordinate and subject to control, there was no similar necessity to outweigh them.

Union unpopular.

Nor can it be said, if we except members of Parliament and such persons as, although not in Parliament, engaged in a scientific study of political questions, that union was less unpopular in Ireland than in England. Much the greater number were disinclined to relinquish the character of a separate kingdom for the purpose of becoming part of another, even although that other were greater and more powerful. The advantages expected from extended liberty of trade seemed remote and uncertain; while the evils of increased absenteeism, and the consequent withdrawal of a large part of the revenues

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\* This is the tone of Swift's observations on the Scotch union in his *Public Spirit of the Whigs*; and he adds to the sarcasm by making Scotland boast of the number of Peers and other persons she had quartered on England: just as if (he says) a person of quality having been prevailed on to marry a woman, his inferior, she should argue that she was as good as her husband because she brought him as numerous a family of relations and servants as she found in his house. The Scotch (he adds) had acquired more money out of the union than a native of that country, who had not travelled, could before that measure have formed an idea of,

of the island to be expended outside it, were certain and immediate.

The effect of rejecting the project of union was to confirm the legislative relations of the English and Irish Parliaments in the same condition as they were during the last years of William III., and to give confidence to the former in maintaining the claims which it had in his reign, with so much determination, advanced. Then the English Parliament proceeded by passing resolutions and by addresses to the King.\* Legislation upon the subject would, of course, be a still more decisive mode of asserting a right. And about five years after the accession of George I. to the throne opportunity was afforded for this course. At that time the English House of Lords was the ultimate appellate tribunal from the English Courts of Chancery and Common Law. It assumed the same jurisdiction over the Irish Courts. In a suit in one of the latter, appeals were taken to the Irish House of Lords and to the English House of Lords. These tribunals pronounced disagreeing judgments. Each claimed to be the ultimate Court of Appeal. Neither would give way. Which was to prevail? The Irish judges, when consulted, pronounced for the right of the Irish House of Lords. The English Parliament determined to answer their judgment by a declaratory Act in

Jurisdiction in Irish causes of the English House of Lords questioned.

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\* See page 41, *supra*.

favour of the English House of Lords. But the judicial superiority of the English House of Lords was only a branch of the general superiority demanded for the English Parliament. If it was expedient then to affirm the former, it was deemed equally expedient to affirm the latter.\*

6 Geo. I Accordingly, the Act—so well known as the sixth of George the First—was passed by the English Parliament. This not only declared the English House of Lords the ultimate appellate tribunal for Irish suits, but enacted in express words that the King's Majesty, by and with the advice and consent of the Lords and Commons of Great Britain in Parliament, had, and of right ought to have, full power and authority to make laws and statutes of sufficient force and validity to bind the kingdom and people of Ireland. It further added, that Ireland hath been, is, and of right ought to be, subordinate unto, and dependent upon, the Imperial Crown of Great Britain, as being inseparably united and annexed thereto.

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\* The Irish House of Lords, in a Paper drawn up to support their case at this time, had revived the assertion that the Irish chiefs were not conquered by Henry II., but 'without any war or chivalry' submitted to him, and that he in return ordained, at the instance of the Irish, that such laws as he had in England should be of force and observed in Ireland, whereby the privilege of a distinct Parliament was conferred. — *Journals of Irish House of Lords*, vol. ii., pp. 655-660.

The statute, except as a challenge to the Irish Parliament, was obviously of no value. If the English Parliament and English House of Lords had the jurisdiction it claimed for them, the Act was superfluous: if they had not, the English Parliament alone could not, by passing the Act, confer jurisdiction upon them. As a challenge, however, the enactment served the purpose of those who procured it; for the Irish Parliament remained silent, and under such circumstances it was not unfair to allege that it no longer disputed the legislative supremacy of England.

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## CHAPTER VIII.

## PARLIAMENT OF IRELAND.

[1719-1760.]

Effect of  
English  
Act  
against  
export of  
Irish wool-  
len goods.

AT the time when the Parliament of England passed the Act of the Sixth of George I., and thus declared its determination to persist in asserting a power to make laws for Ireland, the injurious effects of its previous exercise of the power were becoming visible. Before the English Act of William III.,\* prohibiting the export of woollen manufactured goods from Ireland, there was a considerable trade from Irish ports connected with this department of industry. The manufacture of wool at once ceased; the persons engaged in it either left the country or sank into poverty.

English  
policy as  
to Irish  
trade.

The Woollen Act followed the Navigation Act of 1663, which excluded Irish shipping from the colonies.† With the exception of the linen manufacture, which from the time of Strafford, who introduced it, had been encouraged, English policy evidently aimed at diverting the Irish from trade and manufactures. If, in place of

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\* 10 & 11 Wm. III., ch. 10 (English). See page 42, *supra*.

† 15 Car. II., ch 7 (English). See pages 33, 34, *supra*.

making woollen cloth, Irish industry were to turn to any other employment, so long as the English Parliament exercised the power of legislating for Ireland, those who engaged in the substituted occupation had no security that it might not in a moment be extinguished. Capitalists feared to invest in Irish manufactures, and there were consequently none, beside the linen, of any importance.

The Irish Parliament, as has been mentioned, <sup>Discontent.</sup> made no answer to the English statute of George I., but this only increased the dissatisfaction of the Irish people. General despondency prevailed. The island seemed shut in as by a brazen wall. 'Ireland,' said Swift, 'is in the position of Arachne, enjoined to spin and weave for ever out of her own bowels.'\*

In this condition—discontent without action—<sup>Increased in 1723.</sup> affairs remained in Ireland until 1723, when the conduct of the English Government in reference, not to trade or manufactures, but to an exercise of the royal prerogative in Ireland, kindled the general discontent into a ferment, and gave rise to an agitation against the supremacy assumed by the English Government in Ireland.

The events now alluded to are those which <sup>Wood's Patent.</sup> occurred in connexion with a patent for a copper coinage for Ireland, granted by George the

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\* See Swift's *Proposal for the Universal Use of Irish Manufacture, &c.*, published in 1720, the year after 6 Geo. I

Second to an ironmonger of Wolverhampton, named Wood, and the issue under its authority of coin alleged to be below the stipulated standard. With respect to this measure the Irish Parliament was never consulted; and thus offended national pride united with the supposition of pecuniary loss to create resentment, and to stimulate resistance to the scheme being carried into effect. All classes in Ireland combined to prevent the circulation of Wood's money.

The  
'Drapier's  
Letters.'

That a movement of this character would remain confined to the particular grievance in which it originated was improbable. That it extended so far as it did seems to have been wholly due to Swift; who, placing himself at the head of a party which demanded that Wood's contract should be annulled, addressed, under the assumed name of M. B., Drapier, a series of letters to the people of Ireland, in which his extraordinary power of ridicule and invective was without scruple used against Wood and his project. From these topics he turned aside to deal with the general ascendancy claimed for England, and as part of it with its legislation for Ireland. 'I have done this,' he says, 'in order that the spirit so seasonably raised may be refreshed and continued, and that the people of Ireland may see that by the laws of God, of nature, of nations, and of their own country, they are, and ought to be, as free a people as their brethren in England.'

Swift's reference to the relations which were assumed in England to exist between the two countries is brief, and of such importance as to deserve to be cited. He commences by pointing out that 'those who come hither to us from England, and some weak people among ourselves, when in discourse we make mention of liberty and property, shake their head and tell us, that Ireland is a depending kingdom, as if they would seem by this phrase to intend that the people of Ireland are in some state of slavery or dependence, different from those in England: whereas, a depending kingdom is a modern term of art, unknown to all ancient civilians and writers upon government; and Ireland is, on the contrary, called in some statutes an Imperial Crown, as held only from God, which is as high a style as any kingdom is capable of receiving. Therefore, by this expression, a depending kingdom, there is no more to be understood than that, by a statute made here, in the thirty-third year of Henry VIII., the King and his successors are to be Kings Imperial of the Realm, as united and knit to the Imperial Crown of England.' 'I have,' he continues, 'looked over all the English and Irish statutes, without finding any law that maketh Ireland depend upon England, any more than England doth upon Ireland. We have, indeed, obliged ourselves to have the same king with them, and consequently they are obliged to have the same king with us.' . . .

Fourth  
'Drapier's  
Letter.'

‘It is true, indeed,’ he proceeds, ‘that within the memory of man the Parliaments of England have sometimes assumed the power of binding this kingdom by laws enacted there; wherein they were, at first, openly opposed (as far as truth, wisdom, and justice, are capable of opposing) by the famous Mr. Molyneux, an English gentleman, born here, as well as by several of the greatest patriots and best Whigs in England; but the love and torrent of power prevailed.’ ‘The arguments,’ he observes, ‘on both sides were invincible; for, in reason, all government without the consent of the governed, is the very definition of slavery; but, in fact, eleven men well armed will certainly subdue one single man in his shirt.’

Prosecu-  
tion of  
Drapier’s  
Fourth  
Letter.

The Irish Government, which, so long as the ‘Drapier’s Letters’ were confined to Wood and his coinage, abstained from interfering, now perceiving the sympathy likely to be extended to Swift’s animadversions upon the assumption of supremacy by the English over Ireland, endeavoured to check the spread of such sentiments by instituting a prosecution against the printer of the ‘Letters.’ The observations that have been cited were published in the fourth letter, which was therefore made the subject of an indictment, and in it described as containing, along with other objectionable matter, passages tending to alienate the affections of the King’s subjects in England and Ireland from each other. The

prosecution, however, failed: as the Grand Jury of the city of Dublin refused to find the Bill, notwithstanding strong observations addressed to them in its favour by Chief Justice Whitshed.

Upon the subject of Wood's contract, the English Government gave way; the coins were withdrawn from circulation, the patent was revoked, and Wood himself received compensation. When the principal question was decided, the controversy concerning the English Parliament, which, although more important in itself, had at the time been taken up only as subsidiary to the matter of more immediate concern, ceased any longer to awaken interest. The English Government, warned by what had occurred, became cautious in its dealings with Ireland, and except as to the surplus revenue no controversy occurred. It was not until towards the close of the reign of George II. that complaints of the subordination in which the Irish Parliament was kept were again heard.

The person who then revived discussion of the subject was Charles Lucas, a member of the medical profession. His interference in politics was at first with reference to the affairs of the Corporation of Dublin, in which he was a Town Councillor. Aware that if he confined himself merely to local discussion his influence would be neither extensive nor lasting, Lucas passed on to national questions, and

recurred to the topics with which the writings of Molyneux and Swift had familiarized every educated Irishman—Was the English Parliament to continue to legislate for Ireland? If it was, what safety remained for any Irish interest? It had extinguished the woollen manufacture; it might destroy the linen manufacture also.\*

Scotch  
union  
then un-  
popular.

In Scotland the remedy for commercial depression had been sought in union; but down to this time the experiment was attended with little success. The Scotch people still continued to regard the union as the surrender of national independence by a Parliament which acted from unworthy motives. Hostility to it had obtained support for the rebellions of 1715 and 1745.† Example, therefore, warned against the measure being repeated for Ireland, and checked the zeal of its former supporters, already chilled by the refusal of the English Government to entertain the propositions of the Irish Parliament. With the lower classes in Ireland, especially in Dublin, the notion of union had always been unpopular, and their dislike had before this time developed into active hostility.‡

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\* The growth of Lucas's influence is shown by his ultimately being returned to the Irish Parliament as member for the city of Dublin.

† This is Sir Walter Scott's opinion (*Miscellaneous Works*, vol. xxv., p. 104).

‡ An instance of this hostility appeared in 1759. Upon a mere rumour that union was contemplated, a violent riot

There was therefore no attempt by Lucas to renew the ideas which were in favour in 1707. He turned to the far more attractive project of legislative independence. 'The assumed superiority of the English Parliament,' he said, 'was a shocking solecism in government. The King of Ireland, the High Court of Parliament in Ireland, and with that the whole people of Ireland, were subservient and dependent on the arbitrary will of the Parliament of Great Britain! Liberty was the birthright of the people, and they could not relinquish it.'\*

Lucas advocates the legislative independence of Ireland.

Lucas spoke to auditors predisposed to hear him; he put into shape and distinctness the notions which vaguely floated through men's minds. The English statutes which had crushed Irish trade and manufactures could not be defended. A desire to terminate English legislative pre-eminence spread through the community. From the people it reached Parliament, and infused among its members a spirit of nationality. In the House of Commons a party was formed

Effect of Lucas's advocacy.

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broke out in Dublin. The account of it in the *Annual Register* for that year (p. 129) states that a mob of several thousands of persons broke into the House of Lords, and insulted them, and then obliged members coming to the House of Commons to take an oath never to consent to an union, or give a vote contrary to the interests of Ireland.

\* *Letter to the King, 1749. Political Constitutions, 1751.* The most recent account of Lucas will be found in Gilbert's *History of the City of Dublin*, vol. iii., p. 98.



which professed to aim only at serving Irish interests. Before the death of George II. this party had become a regular Opposition, engaged in criticising severely the ministerial measures, demanding for the Irish House of Commons increased control over financial arrangements, and jealously objecting to the multiplication of places and pensions.

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## CHAPTER IX.

### PARLIAMENT OF IRELAND.

[1760-1780.]

THE accession of George III. to the throne <sup>Accession  
of George</sup> caused a new Parliament to be summoned <sup>III.</sup> in Ireland. The tendencies towards a policy of nationality, which had appeared in the preceding House of Commons during the last years of its existence, were renewed in that which was now returned, and with much greater strength. Its members, more accurately than their predecessors, represented the public opinion of the time, and their own sentiments were more in sympathy with those of the people generally.

At this time a Parliament, unless dissolved by <sup>Octennial  
Act.</sup> the royal prerogative, lasted for the entire reign of the king who summoned it. Under George II. the same Parliament had continued for thirty-three years. The popular constituencies and the owners of boroughs were alike dissatisfied with a system which opened for them such rare opportunities to exercise their power, and both now instructed their representatives to insist upon having a limitation to the duration of Parliament of reasonable length. The question was at

once brought forward in the House of Commons; but even the pressure of those to whom its members were indebted for their seats could not induce them at once to abridge their own term of office; and seven years elapsed before an Act was passed which fixed eight years as the utmost period of life for an Irish Parliament.

Effects of  
Octennial  
Act.

The Octennial Act, as the statute limiting the duration of Parliament was called, unquestionably effected great changes in the character of the Irish House of Commons. Previously its members had practically only one immediate source of insecurity in their seats to fear—the Crown might dissolve Parliament. Their interest, therefore, led them to support the King's Ministers, since this was the way to avert a dissolution. Independence could be expressed in debate, but in voting the Government were not to be placed in a minority, since defeat would lead to a general election. Now, instead of a possible undisturbed tenure for the reign of, it might be, a youthful sovereign, a representative of the Commons had the certainty, in the case of a county or city, of meeting his constituents, or, in the case of a small borough, the patron who nominated him, at the latest, eight years after his return. The electors, not the Crown, became the task-masters to be obeyed. And, as a consequence, if a policy were popular outside Parliament, it soon came to be popular within it—at least so far as the votes of the members were concerned.

Another important result from the measure was, that increased means were afforded of introducing new men into the Legislature. The most distinguished abilities might, under the former system, have waited in vain for an opening to admit them. Those who actually held the seats in the House of Commons could not be expected to resign a possession which enabled them to obtain offices for themselves, their friends, and relatives; and when a vacancy did from death or other cause occur, they were more ready to impede than to promote the introduction of anyone who was likely to be a competitor for the prizes of political life.

Contemporaneously with the passing of the Octennial Act Parliament was dissolved, and a new House of Commons was elected. The influences which the Act brought into operation were apparent in the character, and subsequently in the conduct, of its members. From this period may be traced in the House of Commons an increased manifestation of the sentiments popular among the people generally. At the same time more zeal for the public service, greater political knowledge, and improved capacity in the management and discussion of affairs, became perceptible.\*

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\* Hardy, in his *Life of Charlemont* (2nd ed., vol. i., pp. 129-170), enumerates and describes the persons eminent in the second and third Irish Parliaments of George III. To estimate the progress of improvement since Swift's time,

Practice  
under  
Poynings'  
law.

The system under which legislation was at this time conducted in the Irish Parliament had, from the time of Poynings' law (10 Henry VII.), the provisions of which have been already noticed, continued the same. Not a Bill, but the heads of a Bill, might be suggested in either House; these heads must then be submitted to the Irish Privy Council, where they were examined and revised; and from that body they went to the King and Council in England. If approved, they were thence returned, in the form of a Bill, to the House where they originated, with such alterations (if any) as the English Council, advised by the English law officers, might require. The Bill, thus returned, then went through the prescribed stages of first reading, committee, and second and third readings, in both Houses of the Irish Parliament. It might, at any stage, be rejected, but it could not be altered.

Position of  
Irish Par-  
liament.

Whatever, therefore, might be the improvement in the constitution and character of the Irish Parliament, however fitted it might become for the work of legislation, yet the power vested in the Privy Council of Ireland and the Privy

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compare Hardy's account with the verses of the latter, beginning—

'As I stroll the city, oft I  
See a building large and lofty,  
Not a bow-shot from the College,  
Half the globe from sense and knowledge.'

Council of England gave these bodies complete control over its proceedings. It could do nothing without their assent. It was further kept in check by the claim of the Parliament of Great Britain to have a concurrent, or perhaps it should more properly be termed a paramount, jurisdiction to interfere with it. Whether rightly or wrongly, the Lords and Commons of Great Britain had proclaimed that, with the royal assent, they could make laws for Ireland. The announcement was made with the sanction of the Crown, and upon the suggestion of a British Government, and it had never been withdrawn or qualified. The Parliament of Ireland existed with the consciousness that this assumed authority was suspended over its proceedings, and might at any moment be called into action, and be then supported by the whole power of Great Britain.

A brief reference to the Parliament which Parliament of Geo. II. lasted during the thirty-three years of George the Second's reign will illustrate the influence which its subordinate position exercised over its course. Parliament at that time assembled only in every second year. When it met, the limits of possible progress were discouragingly visible. Poynings' law and the sixth of George I. hemmed in its range of legislation. It could, and did, deal with local affairs. Many measures of utility in connexion with them approved, and in most instances suggested, by the successive Irish Governments, were passed. From great subjects it

was barred. When it began, and when it ended, there was no Habeas Corpus Act in Ireland, no Mutiny Act; taxes, which ought to have been within the control of Parliament, had been granted to the Crown in perpetuity; judicial offices were held at the pleasure of the Crown. Parliament made no protest against the continued suppression of the woollen manufacture and the persistent prohibition of colonial trade. The real object of attention with its members, that to which all their energies were directed, was the struggle maintained during its sittings for political power. A few nobles then predominated over Irish society. The British Ministers, to protect the interests of their own country, sent over Englishmen to fill the offices of Primate in the Church and Chancellor in the law (the latter with a peerage). The great Nobles, the Primate, and the Chancellor, were the rival candidates for pre-eminence, among whom the members of each House of Parliament selected their chiefs and leaders.

Effect of  
English  
example.

The parliamentary system, such as it existed under George II., could not satisfy the Irish Parliament, when it became conscious of its own strength, was in constant communication with its constituents, and reflected external opinion. The Parliament of Great Britain, engaged upon questions of high importance, debating them with admirable wisdom and eloquence, was before it an example to imitate—why not, if restrictions

were removed, to rival? Especially the Irish House of Commons was animated by these feelings. Its members naturally contrasted the restraint and subordination of their own proceedings with the freedom and authority allowed to an English House of Commons.\*

For ten years after the Octennial Act the Irish Parliament continually advanced in importance. The English Government was able to retain a majority of the House of Commons in allegiance, but it was at the same time confronted by an Opposition of constantly increasing number. By them taxation and expenditure were closely scrutinized; and measures of a popular character were originated with boldness. There seems, however, to have been a reluctance to bring forward in any clear or decided manner the question of legislative independence—possibly because after the charge of Chief Justice Whitshed upon the prosecution of the Drapier's fourth letter, it may have been thought that

Ten years  
after Oc-  
tennial  
Act.

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\* Bowes, the Irish Lord Chancellor, wrote to Dodington, an English minister, immediately after the accession of George III., that the English House of Commons was looked to 'as the model, and in general they think themselves injured in the instances in which theirs, upon the legal constitution, must differ.' This letter is printed in full in the appendix to the first volume of Adolphus's *History of England*. Hardy, in his *Life of Charlemont*, notices the influence of English example on the Irish Parliament (vol. i., pp. 79-82). Lecky takes a similar view (*History*, vol. iv., p. 352).



there were legal objections to resisting the authority of the British Parliament, such as it was affirmed in the sixth of George I. The subject, when it arose, was spoken of in metaphors and ambiguous phrases, and it was esteemed an instance of political courage in Pery, a Member of Parliament of the highest reputation, to say . . . 'I see no reason for indistinct or figurative language. I will speak out. The Parliament of Great Britain has no right to make laws for Ireland.'\*

Volun-  
teers.

This was the condition of affairs when circumstances, now to be related, effected an entire revolution in the policy adopted towards Ireland and the Irish Parliament. Great Britain became engaged in war with France, and, occupied with the protection of its own coasts and possessions, could not spare an adequate supply of troops to repel a foreign army, if it were to land in Ireland. The only hope or means of defending that country lay in the voluntary formation of associations for the purpose. And accordingly, in 1778, invasion being at that time apprehended, such associations were everywhere in process of being organised. The Volunteers regulated, without the interference of external authority, their own proceedings; they elected their own officers, and defrayed most of the expense of their own arms and equipments. They

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\* See Hardy's *Life of Charlemont*, vol. i., p. 161.

were nearly all Protestants, but Catholics were not excluded. Persons of high social distinction were at their head. They were drilled and instructed in military discipline. In little more than a year, according to the computation of Hardy,\* who had peculiar opportunities of acquiring information on the subject, they numbered about 42,000.

The progress of the Volunteer movement was not without influence upon Parliament in Ireland. The most eminent persons in both Houses were engaged in forwarding and guiding it. Those who joined the various regiments brought with them an ardent sympathy with the wants and desires of the classes to which they belonged. Parliament, when advocating popular measures, could rely with confidence upon receiving assistance from every corps enrolled.

Emboldened by the certainty of support from this powerful body, the parliamentary Opposition pressed its policy upon the Government. The subjects first entered upon were the commercial relations between Great Britain and Ireland. Extreme distress and poverty just then affected the working classes. Consequent upon their depressed condition discontent universally

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\* Hardy was the intimate friend and biographer of Lord Charlemont. This nobleman was elected President of the Convention of the Volunteers in 1783. (See *Life of Charlemont*, vol. i., p. 382.)

prevailed among them. They asked—and the higher classes, regarding their discontent with anxiety, also asked—If trade be not made free, if the export of manufactured goods be not allowed, what employment is there for the poor? how are they to be maintained?

Combina-  
tion to use  
Irish ma-  
nufactures.

Fifty years before, Swift had suggested combination for the encouragement of Irish manufactures. Burn, he used to say, everything that comes from England, except its coals.\* The suggestion to use home-made goods was now acted upon. Not only were those made at home preferred, but agreements against importing goods from England were entered into and signed by numbers. The Volunteers, heading the movement, insisted that their uniforms should be made of cloth woven in Irish looms.

Grattan.

When the Irish Parliament met in October, 1779, Grattan, who although not yet for four years in the House of Commons, had won for himself a position of the highest eminence, brought forward the question of commercial restrictions by an amendment to the Address which was proposed in answer to the speech of the Lord Lieutenant. The views that Grattan advocated received also the support of Flood and Burgh;

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\* Swift, however, was not himself the author of this saying. See Swift's tract, entitled *A Proposal for the Universal Use of Irish Manufacture in Clothes and Furniture of Houses, &c., utterly renouncing everything that cometh from England*, published in 1758.

the former, who then held the high office of Vice-Treasurer under the Crown, exercised in the House of Commons an influence, at that time most powerful, and formerly supreme: the latter was Prime Sergeant, and at the head of the Irish Bar, both in rank and attainments. The result of the discussion which ensued upon the amendment was, that a resolution was unanimously carried which affirmed that 'nothing but a free trade could save the country from ruin.'

In the end the British Government and the British Parliament gave way. The English Act of William, which prohibited the exportation of woollen goods, and a British Act of George II., which prohibited the exportation of glass, were repealed. Trade with the English settlements and plantations in America, the West Indies, and Africa, was thrown open, with the condition only that Irish trade should be subject to the duties then, or at any time thereafter to be, imposed for like exports or imports in British ports and harbours.\*

Free Trade  
conceded.

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\* See Acts 20 George III. ch. 6 and ch. 10 (English); and for the Acts repealed, see pages 33, 34, 42, *supra*; and 19 George II. 'Free trade' in the resolution of the Irish Parliament is not used in its modern sense. It means merely freedom from the prohibitions and restrictions on trade to and from Ireland, imposed by English legislation.

## CHAPTER X.

## PARLIAMENT OF IRELAND.

[1780.]

Effect  
of conces-  
sion.

SUCCESS in obtaining concessions connected with trade and commerce taught the Irish Parliamentary Opposition their strength. They saw that measures aimed to advance the prosperity and greatness of the nation would command the support of the Volunteers and the sympathy of the people: and now experience had proved that with such aid resistance on the part of the British Parliament might be overcome.

Claims of  
British  
Parlia-  
ment ques-  
tioned.

The subject at that time, as indeed at all times, of most importance to the Irish Parliament was its own jurisdiction. Could the British Parliament interfere and overrule the measures which might be enacted in Ireland to promote the interests of the country? Could it now reimpose the laws injurious to local trade and manufactures which had been rescinded? Of what avail to suggest heads of Bills calculated to assert the liberties of the country, or develop its resources, if, as had happened with some of this character not long before, they

could be suppressed at the will of the English Privy Council? \*

There were, however, difficulties in the way of a movement for constitutional rights, which did not impede the demand for commercial privileges. Most statesmen in England, and many in Ireland, at this period feared to concede independence to the Irish Parliament, lest it might be used to impair the connection between the two kingdoms, and thereby to endanger their acting in concert. Besides, gratitude seemed to dictate that when so much had been done to liberate colonial trade (a benefit that must be referred to bounty, not right), some delay ought to be interposed before further claims upon Great Britain were put forward.

Considerations of this nature seem to have operated with the chief leaders of the party which had allied itself with national interests, Grattan excepted. He, when discussion as to the commercial privileges which had been granted, arose in the Irish House of Commons, and some speakers declared that topics which tended to prevent the good understanding of the kingdoms of Great Britain and Ireland ought to be postponed, expressed his opinion that 'the time for constitutional relief was when commercial relief

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\* Among the heads of Bills passed in Ireland, not returned from England, were a Habeas Corpus Bill and a Bill for entitling the Judges to hold during good behaviour.

had been obtained.’\* Acting upon this view, he soon afterwards assumed to direct the course of the patriotic party, and intimated that he would move in the House of Commons for a declaration of the rights of Ireland.

Obstacles  
in Grat-  
tan's way.

When he thus came forward and appropriated to himself what was the supreme political question of the period, Grattan stood almost alone. The influence of the Crown was directly used to oppose him. ‘The King,’ wrote an English Minister to the Lord Lieutenant, ‘commands me to signify that it is expected from you that you do oppose and resist any attacks upon the Constitution in every stage of their progress.’† The Irish House of Lords, by a decided majority, pronounced against further agitation, and resolved that it would discourage and defeat every attempt which misguided men might make towards raising groundless jealousies in the minds of the people, and diverting their attention from commercial advantages.‡

19th April,  
1780.

But neither influence nor opposition could divert Grattan from his purpose. On the 19th

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\* So the Marquis of Buckingham, then Lord Lieutenant, states to Lord Hillsborough. (See letter of 17th February, 1780, printed in full in *Grattan's Life*, by his Son.)

† Letter of Lord Hillsborough to Earl of Buckinghamshire, March 28th, 1780, printed in full in *Grattan's Life*, by his Son, vol. ii., p. 31.

‡ The resolution was carried by forty-six to eight. It was moved by the Duke of Leinster. (See *Grattan's Life*, by his Son, vol. ii., p. 27.)

of April, 1780, he proposed the following resolution in the House of Commons: '... That the King's Most Excellent Majesty and the Lords and Commons of Ireland are the only power competent to make laws to bind Ireland.'

This resolution was introduced in a speech adapted with singular skill to overcome the difficulties by which its advocate was surrounded. Molyneux and Swift had supported the proposition which it expressed by reasoning, and all educated Irishmen were familiar with their writings. It was enough to glance at topics of this character: action was what was now wanted. The feeling of nationality was deeply and widely diffused, but it lay languid, dispirited, and needing to be aroused into energetic life. Grattan's speech.

No division took place upon the resolution. It was evaded by an amendment, which led to the question being adjourned indefinitely. But the case against England had been stated, the motives for immediate decision supplied; and it is no exaggeration to say that, when Grattan ceased to speak, he had dictated and moulded the whole Irish policy of the future. A speech pregnant with such consequences rightfully claims to be noticed, at least in a summary, which shall retain an outline of the topics and arguments discussed.\* Result of motion.

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\* See Hardy's *Life of Charlemont* (2nd ed., vol. i., p. 394) for the effect of this speech at the time. 'It fulminated,' he



Grattan's  
speech.

I have entreated, Grattan began, an attendance on this day that you might, in the most public manner, deny the claim of the British Parliament to make law for Ireland, and with one voice lift up your hands against it. If I had lived when the Act of William took away the woollen manufacture,\* or when the Sixth of George the First declared this country to be dependent and subject to law to be enacted by the Parliament of England, I should have made a covenant with my own conscience to seize the first moment of rescuing my country from the ignominy of such acts of power; or if I had a son, I should have administered to him an oath that he would consider himself as a person separate and set apart for the discharge of so important a duty. Upon the same principle am I now come here to move a declaration of right, the first moment occurring, since my time, in which such a declaration could be made with any chance of success, and without aggravation of oppression.

Speech  
continued.

Notwithstanding (so the speech proceeds) the import of sugar and the export of woollens (referring to the concessions in relation to trade and commerce), the people are not satisfied. A greater work remains. Your ancestors lost to

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says, 'over Ireland: imperfect as the copy was, those who perused it could not conceive how it could be resisted.'

\* See page 42, *supra*.

Ireland trade and liberty: you, by the assistance of the people, have recovered trade; you still owe the kingdom liberty: she calls upon you to restore it. The power which took away the export of woollens and the export of glass may take them away again; the repeal is partial: the ground of repeal is upon a principle of expediency. But expedient is a word of appropriated and tyrannical import: an ill-omened word, selected to express the reservation of authority, while the exercise is mitigated. . . . The repeal of the Woollen Act, pointed against the principle of our liberty—present relaxation, but tyranny in reserve—may be a subject for illumination to a populace, or a pretence for apostasy to a courtier, but cannot be the subject of settled satisfaction to a free-born, an intelligent, and an injured community. It is therefore they consider free trade as a trade *de facto*, not a trade *de jure*; a license to trade under the Parliament of England, not a free trade under the charters of Ireland—to maintain which Ireland must continue in a state of armed preparation, dreading the approach of a general peace, and attributing all she holds dear to the calamitous condition of the British interest in every quarter of the globe.

The opportuneness of the time for an assertion of right is then enlarged upon. England, Grattan urges, smarts under the American war: the doctrine of imperial legislature she feels to

Speech  
continued.

be pernicious; the revenues and monopolies annexed to it she has found to be untenable: her enemies are a host pouring upon her from all quarters of the earth; the balance of her fate is in the hands of Ireland. You are not only her last connexion—you are the only nation in Europe that is not her enemy. Besides there does, of late, a certain damp and spurious supineness overcast her arms and councils, miraculous as that vigour which has lately inspirited yours; for with you everything is the reverse. Never was there a Parliament in Ireland so possessed of the confidence of the people. You are the greatest political assembly in the world; you are at the head of an immense army: nor do we only possess an unconquerable force, but a certain unquenchable public fire, which has touched all ranks of men like a visitation.

Speech  
continued.

The Volunteers, whom he estimates at 40,000, 'conducted by instinct, as they were raised by inspiration,' and the zeal and promptitude of every young member of the community, are then alluded to. Yes, there does exist, he exclaims, an enlightened sense of right, a young appetite for freedom, a solid strength, and a rapid fire, which not only put a declaration of right within your power, but put it out of your power to decline one. . . . You have done too much not to do more; you have gone too far not to go on. . . . It is very true you may feed your manufacturers, and landed gentlemen may get their

rents, and you may export woollens, and may load a vessel with baize, serges, and kerseys, and bring back directly from the plantations sugar, indigo, speckle-wood, beetle-root, and panellas; but liberty, the foundation of trade, the independency of Parliament, the securing, crowning, and consummation of everything, are yet to come. Without these the work is imperfect, the foundation is wanting, the capital is wanting, trade is not free, Ireland is a colony without the benefit of a charter, and you are a provincial synod without the privileges of a parliament.

Referring to the sixth of George the First and to the Mutiny Act and other Acts of the English Parliament being enforced in Ireland without being re-enacted by an Irish Legislature, Grattan asks whether a country so circumstanced is free? Where is the foundation of trade? Where is the security of property? Where is the liberty of the people? I here in this declaratory Act see my country proclaimed a slave! I see every man in this House enrolled a slave! I see the judges of the realm, the oracles of the law, borne down by an unauthorised foreign power! I see the magistrates prostrate, and I see Parliament witness of these infringements and silent. . . . What, are you, the greatest House of Commons that ever sat in Ireland, that want but this one Act to equal that English House of Commons that passed the Petition of Right, or that other that

Speech  
continued.

passed the Declaration of Right—are you afraid to tell the British Parliament that you are a free people?

Speech  
continued.

The weakness of former periods, the want of courage in their leaders, the servility of previous Parliaments, are then touched upon. Recently the people had recourse to two measures, viz. a commercial and a military association.\* The consequence, he says, was instant: the enemy that hung on their shores departed; when the Parliament asked for a free trade, the British nation granted it. Still the people of Ireland are not satisfied: they ask for a Constitution. What have these walls for the last century resounded? The usurpation of the British Parliament and the interference of the Privy Council.

There is no objection to this resolution, except your fears. I have examined your fears: I pronounce them frivolous. The woollen trade and the Act of Navigation made England tenacious of a comprehensive legislative authority; as she has now ceded that monopoly, there is nothing in the way of your liberty except your own corruption and pusillanimity. . . . Take notice, the very Constitution which I move you to declare, Great Britain herself offered to America. . . . What, has England offered this to the resistance of America, and will she refuse it to the loyalty of Ireland?

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\* See pages 94 and 96, *supra*.

I shall hear of ingratitude : I name the argu-<sup>Speech continued.</sup>ment to despise it. . . . I know of no species of gratitude which should prevent my country from being free, no gratitude which should oblige Ireland to be the slave of England. In cases of robbery and usurpation nothing is an object of gratitude, except the thing stolen, the charter spoliated. A nation's liberty cannot, like her treasure, be meted and parcelled out in gratitude : no man can be grateful or liberal of his conscience, nor woman of her honour, nor nation of her liberty ; there are certain unimpartible, inherent, invaluable properties, not to be alienated from the person, whether body politic or body natural. . . . Anything less than liberty is inadequate to Ireland, dangerous to Great Britain. We are too near the British nation, we are too conversant with her history, we are too much fired by her example, to be anything less than her equal. Anything less, we should be her bitterest enemies—an enemy to the power that smote us with her mace, and to that Constitution from whose blessings we were excluded.\*

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\* The speech concluded with a peroration, often cited for its oratorical merit. See Note O of Appendix.

## CHAPTER XI.

## PARLIAMENT OF IRELAND.

[1780-1782.]

Grattan's  
speech  
considered.

**I**F the speech, of which a summary is given in the last chapter, be examined, some matters of extreme importance present themselves for comment. Grattan does not deny that the Parliament of Great Britain had conceded to Ireland the right of direct trade with the British colonies in America, the West Indies, and other British settlements. With rhetorical art he undervalues the benefits thereby obtained. He also admits that the restrictions on the export of wool, woollen manufactures, and glass from Ireland, which had been imposed by English statutes, were now repealed. But he points out the insecurity of the repeal; the authority which originally imposed could re-enact, unless for ever deprived of the power. Other grievances, such as the duties on the import of beer into England, the law which prohibited wearing in England clothing not manufactured there, were before 1780 also complained of.\* He makes no men-

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\* See *Commercial Restraints considered in Letters to a Noble Lord*, published in Dublin in 1779 anonymously, but written by Hely Hutchinson, M.P., Provost of Trinity College.

tion of them. The wrong which he denounced was the supremacy assumed by Great Britain over Ireland. Poynings' Act, the claim of the British Parliament to legislate for Ireland, the Acts by which it had legislated, were but signs and consequences of the supremacy. The right which he demanded was that Ireland should rank as the equal, not the subordinate, of Great Britain; that the Irish Parliament should possess the same independence, the same rights in connexion with the affairs and interests of Ireland, that the British Parliament enjoyed in relation to the affairs and interests of Great Britain.

After Grattan's motion had been indefinitely postponed, discussion concerning the jurisdiction of the British Parliament ceased for some time in the Irish Parliament; and in its place the Opposition selected Poynings' Law and the Mutiny Act as matters requiring immediate attention. Poynings' Law it was sought to amend by depriving the Irish Privy Council of the power to alter or suppress the Heads of Bills. The only Mutiny Act was the English Mutiny Act. Under this the army in Ireland was governed. It was insisted that no Mutiny Act was legally valid in Ireland, unless enacted by its own Parliament. The proposed alteration of Poynings' Law was rejected. The demand for an Irish Mutiny Act ended in a perpetual Mutiny Act for Ireland being adopted by an Irish Parliament. It was thought that by this mode of dealing with the law



applicable to the army in Ireland, something was conceded both to the Opposition and the Government: to the former, that it was to be founded upon the authority of an Irish, not an English, legislature; to the latter, that an enactment essential to the safety of the State was withdrawn from the chances of an annual vote.

21 & 22  
Geo. III.,  
chaps. 11  
and 50.

While Poynings' Act remained unaltered, two measures, which the power of veto that it conferred upon the English Privy Council had previously obstructed, were passed. The first (21 & 22 Geo. III., ch. 11) was an Irish Habeas Corpus Act, entitled an Act for better securing the liberty of the subject, which differed from the English in not extending to the prevention of imprisonments beyond seas. In this Act was contained a power for the Chief Governor and Privy Council of Ireland to suspend the Act, by proclamation under the Great Seal, during such time as there should be an actual invasion or rebellion in Ireland or Great Britain. The second (21 & 22 Geo. III., ch. 50) secured the independence of the Judges by providing that their commissions should continue and be in force during their good behaviour. It enabled their removal only upon an address of both Houses of the Parliament of Ireland.

Movement  
for inde-  
pendence.

But these concessions in no way abated the ardour of the people generally for the independence of Ireland. Among all classes, with the exception only of persons holding office under

the Crown, or connected intimately by ties of property with Great Britain, the spirit infused by Grattan's eloquence spread (to use his own language) 'an unquenchable public fire.'

At this time the Volunteer organization had assumed proportions of great magnitude. From its first institution it continually increased in number and importance. The regiments were regularly trained, and exhibited now, as a military force, a high standard of efficiency. Recruited from different ranks and classes, they reflected popular sentiments: officered by men of rank and education, they upheld these sentiments with dignity and influence.

About the close of the year 1781 it was observed that the Volunteers began to manifest much concern in the proceedings of Parliament. This was especially the case with the regiments recruited in the northern parts of the island; and on the 28th of December in that year, a meeting of officers and of some delegates from one of them, led to important results. The Volunteers who were represented at this meeting constituted the southern battalion of the first Ulster Regiment. Before separating, those who attended issued invitations to all the Ulster associations of Volunteers to send delegates on the 15th of February then next (A.D. 1782) to Dunganon (a small town of Ulster, conveniently situated for the purpose), to deliberate respecting the affairs and interests of the country.

Meeting at  
Dungan-  
non.

Upon the day which had been thus appointed, the representatives of one hundred and forty-three corps of Ulster Volunteers assembled. They passed a series of resolutions, among which it is sufficient to mention those which immediately relate to the subject of this treatise: . . . 'That a claim of any body of men, other than the King, Lords, and Commons of Ireland, to make laws to bind this kingdom, is unconstitutional, illegal, and a grievance; that the power exercised by the Privy Council of Great Britain and Ireland under, or under colour or pretence of, the law of Poynings, is unconstitutional and a grievance.'

These resolutions were accompanied by an address to both Houses of the Irish Parliament, thanking them for their efforts in defence of the constitutional rights of the country. 'The voice of the people,' it declared, 'is with you. We are resolved to be free. We seek our rights, and no more than our rights; and in so just a pursuit we should doubt the being of a Providence, if we doubted of success.'

Grattan.

From the time when in 1780 Grattan brought forward the question of national independence, he had attained an ascendancy in the House of Commons. Eloquence of unrivalled brilliancy, an exact and extensive knowledge of Irish affairs, enlarged and comprehensive views derived from diligent study and examination of the great thinkers upon political subjects, the noble enthusiasm of patriotism animating and guiding

his public conduct, amply justified the pre-eminence conceded to him.

Grattan is said to have assisted in framing the resolutions of the Convention of Volunteers; but, however this may have been, he immediately, when they were announced, perceived the impulse which they would communicate to the cause of national independence, and the probable effect which such an example would have upon Parliament. Accordingly, on the 22nd of February, a week after the date of the meeting at Dungannon, he moved an address from the House of Commons, to assure His Majesty that the people of Ireland are a free people, the Crown of Ireland an imperial Crown, and the kingdom of Ireland a distinct kingdom, with a Parliament of its own, the sole Legislature thereof; that by their fundamental laws and franchises, the subjects of this separate kingdom could not be bound, affected, or obliged by any Legislature save only by the King, Lords, and Commons of this His Majesty's realm of Ireland, nor was there any other body of men who had power or authority to make laws for them: that in this privilege was contained the very essence of their liberty.

Address  
moved by  
Grattan,  
22nd Feb.

Grattan, in his former motion, had aimed at stimulating action. He had succeeded, and that object did not need to be further pursued. He therefore now turned to fortify the position he occupied by proofs of its justice. He had only to go

Grattan's  
speech.

to already existing writings for a complete armoury of argument. All that learning and genius could do had been done; it remained to revive in the public mind topics which, although not forgotten, required to be anew presented. With this object he referred to the same historical facts, and adduced much of the same philosophical reasoning, as were to be found in Molyneux's treatise, marshalling them with consummate art and rhetorical effect. From nature, he argued, the British Parliament could not derive the right to legislate for Ireland, because Nature never gave one nation the right to make laws for another. There was no treaty or agreement to sanction such a right; neither was there usage, since the Irish Parliament always repudiated it. Would conquest be relied upon? There was none. What did exist was a compact between Henry II. and the Irish princes, by which the latter gave the former their allegiance, and he bestowed on them the laws and customs of England, and among them the right to be bound only by enactments made by their own Parliament.

Message  
from the  
King.

A motion to adjourn the consideration of the question was carried; and without anything further being then done in respect of it, Parliament was, on the 14th of March, prorogued until the 16th of April. In the interval a new Ministry came into power in England. They proceeded at once to review the condition of Ireland; and, arriving at the conclusion that it was expedient to make

concessions to the popular demands, they arranged that the Duke of Portland, who was sent over as Lord Lieutenant, should send to the Irish Parliament when it met after the prorogation a message indicating what was intended as to the future. The message, expressed in the following terms, was read on the 16th of April: . . . 'His Majesty, being concerned to find that discontents and jealousies were prevailing among his loyal subjects in Ireland upon matters of great weight and importance, recommends Parliament to take the same into their most serious consideration, in order to effect such a final adjustment as may give mutual satisfaction to his kingdoms of Great Britain and Ireland.'

Hutchinson, the Minister in charge of the measures of Government in the House of Commons, expressed from himself sympathy with the objects aimed at by the popular movement. Grattan, assuming that legislative independence was about to be conceded, and determined that all the other requirements of the patriotic party should accompany the concession, at once rose\* to congratulate the House of Commons and the people of Ireland upon their recovered freedom, and to announce, in the name of the nation, the terms,

Grattan's  
speech.

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\* From what Hardy states (*Life of Charlemont*, vol. ii., p. 20), it appears that Grattan acted on this occasion with the concurrence of the Earl of Charlemont—a nobleman whose abilities, social accomplishments, and moral worth, gave him great influence in the Irish House of Lords.

which were demanded in order to satisfy its requirements.

Terms  
insisted  
upon.

These terms were—(1) repeal of the perpetual Mutiny Bill, and dependency of the Irish Army upon the Irish Parliament; (2) the abolition of the legislative power of the Council; (3) the abrogation of the claim of England to make laws for Ireland; (4) the exclusion of the English House of Peers, and of the English King's Bench from any judicial authority in Ireland; (5) the restoration of the Irish Peers to their final judicature—the independency of the Irish Parliament in its sole and exclusive legislature.\*

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\* The speech regards the claim of the British Parliament to legislate for Ireland as withdrawn 'by operation of treaty, not of mere grace and condescension,' and the withdrawal as being therefore irrevocable. 'England and Ireland,' Grattan says, 'treat *ex æquo*.' Substantially Grattan's terms were afterwards conceded.

See in connection with this chapter Notes P, Q, and R of Appendix.)

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CHAPTER XII.

PARLIAMENT OF IRELAND.

[1782.]

THE statute of the sixth of George the First <sup>Repeal of 6 Geo. I.</sup> was an Act of the British Parliament. If the claim of legislative power which it asserted was to be relinquished, it must be by the same authority. Accordingly, concessions to the demands of Ireland being determined upon by the British Government, the first of them was made by an Act of the British Parliament (22 Geo. III., ch. 51, A.D. 1782) which repealed the statute of the sixth of George I., and 'all the declarations and matters therein contained.'

Objections were made to this measure as insufficient to meet the requirements of the case. <sup>Objections to mere repeal.</sup> Merely to repeal, it was said, left matters as they were before the enactment of the statute which was repealed; and provisions of this character could not finally decide the controversy which had so long existed between the Parliaments of England and Ireland concerning the jurisdiction of each. Those who thus argued sought leave to introduce in the Irish House of Commons a Bill which was explicitly to declare the



exclusive right of the Irish Parliament to make laws for the kingdom of Ireland. The motion for this purpose was opposed, upon the ground that repeal of an Act which had asserted a claim to a right was equivalent to renunciation of the claim. The House refused leave to bring in the Bill, and afterwards recorded that it had adopted this course because the exclusive right of legislation in the Irish Parliament, in all cases, internal and external, had been already asserted by Ireland, and had been fully, irrevocably, and finally acknowledged by England.\*

Renuncia-  
tion Act,  
23 Geo.  
III. (Eng-  
lish).

Notwithstanding the resolution thus voted by the Irish House of Commons, in the next Session of the British Parliament a more explicit declaration of the rights of the Irish Parliament was conceded; and a statute, known as the Renunciation Act (23 George III., ch. 28, A.D. 1783), became law, which declared that the right claimed by the people of Ireland, to be bound only by laws enacted by His Majesty and the Parliament of that kingdom in all cases whatever, and to have all actions and suits at law or in equity, which might be instituted in that kingdom in His Majesty's Courts therein, decided finally and without appeal from thence, was established and ascertained for ever.

Repeal of  
Poynings'  
law.

The statutes of Repeal and Renunciation,

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\* See Note S of Appendix.

however, would have effected no more than preventing interference from the British Parliament: if they were to stand alone, Poynings' law would have still made the legislation of the Irish Parliament subject to the control of the Privy Council of Ireland, and the Privy Council of England. It was therefore necessary, in order to complete the independence intended to be conferred upon the Irish Parliament, that Poynings' law should be repealed or modified. As it was enacted by the Irish Parliament, it was not by English legislation that any repeal or modification of it ought to be effected. Hence, recourse was had to the Irish Parliament, and an Act was obtained from it (21 & 22 George III., ch. 47), which provided, that the Lord Lieutenant, or other Chief Governor of Ireland was to certify to the King all such Bills, and none other, as both Houses of Parliament in Ireland should certify to be enacted under the Great Seal of Ireland, without alteration: that such of the same as should be returned under the Great Seal of Great Britain, without alteration, and none other, should pass in the Parliament of Ireland: that no Bill should be certified as a cause or consideration of holding a Parliament in Ireland, and that Parliament might be holden without any Bill being certified, but not without license for that purpose being first had and obtained from the King, under the Great Seal of Great Britain.

Constitu-  
tion of  
1782.

Thus, the parliamentary Constitution, which became known as the Constitution of 1782, was the result of three statutes (two British, and one Irish). By them the Parliament of Ireland was rendered free and independent. It could no longer be controlled or interfered with by the Parliament of Great Britain; its Bills were no longer to be sent to either the English or the Irish Privy Council for approval or rejection. There was no limit imposed upon the subject-matter of debate or legislation. Whatever was within the province of a national Parliament might come before it. Its relations to Great Britain and the British Parliament were substantially the same as before 1707 the relations had been of the Parliament of Scotland to England and the English Parliament, with one exception—that, in order to a Bill becoming law, the royal assent was given in Scotland by a Commissioner attending to represent the Crown of Scotland, while in Ireland the Bill, after having been transmitted to England, should be returned under the Great Seal of Great Britain.\*

Qualifica-  
tions of  
the Con-  
stitution of  
1782 sug-  
gested by  
the Duke  
of Port-  
land.

Under the Constitution of 1782 there was no provision for the case of disagreement in policy between the Parliaments of Great Britain and

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\* It was supposed that this Seal being in the custody of the English Lord Chancellor, a Minister whose conduct could be censured in the British Parliament, it would not be affixed to measures injurious to British interests. See Note T of Appendix.

Ireland. They were equal and co-ordinate, without any paramount authority being provided to over-rule or reconcile them. The rule requiring assent under the Great Seal of Great Britain might afford some check upon the enactment of statutes injurious to Great Britain in Ireland, but in the case of resolutions or proceedings, not taking the form of Bills, the rule did not apply. The two Parliaments might adopt different views as to commerce, foreign policy, treaties, and other relations with foreign powers. Who was to decide in what proportion Ireland ought to contribute to taxation for burdens shared in common by both Great Britain and Ireland? The controversies likely to arise in connexion with these subjects, and the injurious consequences to be apprehended from them, were very clearly foreseen by the Duke of Portland in 1782; and he proposed to guard against the danger by retaining for Great Britain a supreme control in respect of the matters which were of most importance. From a communication made by him at that time to Lord Shelburne, one of the Ministers in the English Government, he would appear to have hoped that the Irish Parliament might be induced to support his views, and in conformity with them to pass an Act 'by which the superintending power and supremacy of Great Britain in all matters of State and general commerce would be virtually and effectually acknowledged'; by which Ireland would be

bound to bear 'a share of the expense of carrying on a defensive or offensive war, either in support of the dominions of the Crown of Great Britain, or those of its allies, in proportion to the actual state of her abilities'; and also bound to adopt 'every such regulation as might be judged necessary by Great Britain for the better ordering and securing her trade and commerce with foreign nations or her own colonies and dependencies, consideration being duly had to the circumstances of Ireland.'\*

Difficulties  
in the way  
of Port-  
land's sug-  
gestions.

Nothing, however, could have been less in accordance with the views and aims of the Irish patriotic party than suggestions of this character. They would have reduced Ireland to a subordinate position in relation to questions of the highest importance, concerning which an erro-

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\* Letter from Portland to Shelburne, 6th June, 1782. This letter is printed in full in the *Life of Grattan*, by his Son, vol. ii., p. 291. At the time of the debates in connexion with the Union, Parliament first became aware of the correspondence, of which it is part. Portland seems from the beginning to have desired that what he calls 'some middle term,' should be thought of, and to have entered upon unsuccessful negotiations for that purpose. (See his letter to Fox, 28th April, 1782, printed in *Grattan's Life*, vol. ii., p. 273.) Lord Rockingham, in a letter to Lord Charlemont, speaks of 'matters which may want adjustment in the new state in which England and Ireland now stand.' Whether he referred to commercial or constitutional questions is uncertain. (See Hardy's *Life of Charlemont*, vol. ii., pp. 37, 44, and *Grattan's Life*, by his Son, vol. ii., p. 282.)

neous decision might vitally affect the welfare of the people. Equality with Great Britain was especially insisted upon by Grattan. Ireland was, he said, too near Great Britain, too fired by her example, not to be her equal. If not her equal, she must be her enemy.\* Moreover, these proposals would have given Great Britain absolute dominion over trade and commerce; but these were the subjects in respect to which the policy of England had been, until 1780, complained of. The obstacles in the way of procuring the acceptance in Ireland of a Bill, such as the Duke of Portland had sketched, were, and as might be expected, were soon found to be, insuperable.† Beside the reasons against bringing forward a measure to restrain the jurisdiction of the Irish Parliament, which have been mentioned, any proceeding of the kind was discouraged by the consideration that, even if such a measure were carried, there was no certainty of its permanence. The existing Irish Parliament might enact it, the succeeding might demand its repeal. An intermediate policy necessarily has no finality; and this is especially true when it relates to the constitution of representative

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\* See page 107, *supra*.

† On the 22nd of June, 1782, Portland wrote from Dublin Castle to Shelburne, that 'any attempts to conciliate the minds of this nation to any such measure as I intimated the hope of would at this moment be delusive and impossible.' (See Note U of Appendix.)

institutions; for such institutions have within them a principle of growth. In Ireland Councils had expanded to Parliaments; Parliaments, without representatives of the Commons, to Parliaments with representatives of the Commons; Parliaments without the native Irish, to Parliaments with representatives from the native Irish; Parliaments, restrained by Poynings' law, and overawed by fear of another Legislature claiming pre-eminence, to Parliaments free, independent, subject to no external authority. Why, then, might not Parliaments excluded from dealing with commercial questions, foreign policy, the great affairs of State, arise out of their depressed condition, and in time regain the elevated position which had, in a moment of weakness, been surrendered?

Constitu-  
tion of  
1782 left  
unaltered.

The British Government, deterred by the certainty of opposition in the Irish Parliament, and doubtful, if the opposition were overcome, whether the results of victory could be more than temporary, did not in 1782 and 1783 make any attempt to add qualifications to the three statutes passed in those years which have been already mentioned. The result was, that for eighteen years the Irish Parliamentary Constitution, as defined by their provisions, continued without being in any way altered.

CHAPTER XIII.

COMMERCIAL PROPOSITIONS.

[1785.]

AT the time when the English Government <sup>English</sup> agreed to repeal the Act of the Sixth of <sup>Ministries,</sup> George the First the Marquis of Rockingham was Prime Minister. Upon his death, in July, 1782, Lord Shelburne succeeded him, and Pitt became Chancellor of the Exchequer. Seven months afterwards, in February, 1783, Lord Shelburne resigned, and the Coalition Ministry of Lord North and Fox, with the Duke of Portland First Lord of the Treasury, was formed. This administration being dismissed by the King in December of the same year, Pitt was then appointed First Lord of the Treasury and Chancellor of the Exchequer—offices which he held until 1801.

Pitt had not taken part in the discussions in the British Parliament respecting the concessions made to Ireland in 1782 and 1783. When at a much later date he had to refer to the period, and to his views of what then took place, he represented himself as disapproving of the system <sup>Pitt's view of the arrangement of 1782.</sup>



by which previously Great Britain and Ireland were, as he expressed it, held together, 'because he thought it was one unworthy of the liberality of Great Britain, and injurious to the interests of Ireland.' At the same time he denied that what was done in 1782 could be held to be, or was intended to be, a final adjustment of the relations between the two kingdoms. It destroyed, he said, all that before existed, without substituting anything in its place.\*

Proceed-  
ings in Ire-  
land in  
1784.  
Address  
from Com-  
mons.

When Pitt became Prime Minister no question was raised in Ireland respecting the existing Constitution; but much debate and agitation prevailed respecting trade. There was a very general demand for protective duties to encourage local manufactures. About three months afterwards a committee of the House of Commons was appointed to inquire into the state of Irish trade and manufactures, before which witnesses were examined; and this was followed by an Address from the House of Commons, voted May 13, 1784, in which, after stating that the interval between the present and next Session would afford an opportunity to propose a well-digested plan for a liberal arrangement of commercial intercourse between Great Britain and Ireland, it was declared that such a plan would be the most effectual means of strengthening the empire at large, and cherishing the common

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\* See *Pitt's Parliamentary Speeches*, vol. iii., pp. 357, 363.

interest and brotherly affection of both kingdoms.\*

The suggestions of this Address, it was obvious, if carried out, would attain much that was aimed at by the Duke of Portland's proposals. He would have averted the danger of collision between the British and Irish Parliaments upon commercial questions by retaining for Great Britain supreme power in reference to such subjects; but a settlement of the commercial relations of the two countries, which professed to be permanent, and which could not be rescinded without the consent of both, might be expected to have little less effect in diminishing the occasions and topics of controversy between them; and this would more especially be the case if the settlement were framed, as was sought in the Address of the House of Commons, in a spirit liberal and generous towards Ireland.

If, then, Pitt's views respecting the incompleteness of the arrangements of 1782 were at this time such as we have seen he afterwards described them to be, they would necessarily predispose him to consider not unfavourably the suggestions of the Irish House of Commons. Moreover, he was impelled in the same direction by other motives even more cogent. He was

Effect of  
the sug-  
gestions of  
the Ad-  
dress.

Pitt pre-  
disposed  
to favour  
them.

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\* *Grattan's Life*, by his Son, vol. iii., pp. 233-236. Lecky's *History of England*, vol. vi., p. 354.

unquestionably a most able financial Minister, and held in relation to trade and commerce more enlightened opinions than any other statesman of his age. He saw that free trade between Great Britain and Ireland, so far from injuring either, would enrich both countries, and consequently tend to the aggrandizement of the State. He approved of the access to the Colonies which had been conceded to Irish merchants; and he desired to place the concession beyond the power of revocation.

In return  
for com-  
mercial ad-  
vantages  
contribu-  
tion to be  
claimed.

But commercial relations were not the only relations which it was expedient to adjust between Great Britain and Ireland. Portland had also sought to have Ireland bound to contribute to the maintenance of the military establishment. Pitt was likewise anxious to effect this object; and now he perceived that, if he dealt with trade and commerce, an opportunity would open to have the question of contribution at the same time settled. Ireland, in return for the benefits which his policy of free trade would confer upon her, might reasonably be expected to aid in meeting the expenses requisite for the protection of the whole empire.

Commer-  
cial Propo-  
sitions,  
1785.  
First set.

Accordingly, the result was, that propositions, eleven in number, known at the time as the Commercial Propositions, were prepared by Pitt and his colleagues, in order that they might be submitted to the British and Irish Parliaments. Ten of these related to matters of trade and

commerce, while the eleventh provided that any surplus of the hereditary revenue (which in Ireland was at the time largely derived from the Customs and Excise, sources of income which free trade was expected to increase) should be appropriated to support the naval force of the empire. These Propositions originated in suggestions from Ireland, and were drawn up after consultation with advisers summoned from Ireland.\*

There is preserved a full explanation by Pitt of the views and objects with which the Propositions were framed, in a letter to the Duke of Rutland, then Lord Lieutenant in Ireland, dated January 6, 1785.† He describes them as representing 'the unanimous opinion of the Cabinet on the subject of the settlement to be proposed as final and conclusive between Great Britain and Ireland . . .' 'The general tenor,' he says, 'of our propositions not only gives a full equality to Ireland, but extends the principle to many

Pitt to  
Rutland,  
Jan. 6,  
1785.

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\* The Propositions are said to have originated with Joshua Pim, a member of a mercantile family then and now eminent in Dublin. What he suggested was added to by Foster, afterwards Speaker of the House of Commons, who went to England and took the draft to Pitt. (See *Grattan's Life*, by his Son, vol. iii., p. 239.)

† Pitt's letters to the Duke of Rutland were privately printed. The letter of the 6th January, 1785, from its importance, has been printed in full in the *Quarterly Review*, vol. lxx., p. 300. It occupies eight pages of the *Review*.

points where it would be easy to have urged just exceptions, and in many other points possibly turns the scale in her favour, at a risk, perhaps a remote one, of considerable local disadvantages to many great interests of this country. I do not say that in practice I apprehend the effect on our trade and manufactures will be such as it will perhaps be industriously represented; but I am persuaded (whatever may be the event) that, by the additions now proposed to former concessions, we open to Ireland the chance of a competition with ourselves on terms of more than equality, and we give her advantages which make it impossible she should ever have anything to fear from the jealousy or restrictive policy of this country in future. Such an arrangement is defensible only on the idea of relinquishing local prejudices and partial advantages, in order to consult uniformly and without distinction for the general benefit of the empire. This cannot be done but by making England and Ireland one country in effect, though for local concerns under distinct legislatures—one in the communication of advantages, and of course in the participation of burdens. If their unity is broken, or rendered absolutely precarious, in either of these points, the system is defective, and there is an end of the whole.’\*

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\*Subsequently in the letter, referring to the passage above cited, Pitt says: . . . ‘the fundamental principle, and the

These Propositions, with a modification of the eleventh, were accepted by the Irish Parliament, but met in England extreme opposition, which in the end prevailed and obliged them to be withdrawn. Others, twenty in number, were substituted in their place. These extended to additional subjects besides those in the first set of Propositions; they also varied from them by changing the eleventh into a declaration that the proposed appropriation of the surplus hereditary revenue would be a satisfactory provision towards protecting trade and the general interests of the empire; and, in a still more important particular, by the introduction of a clause declaring it essential towards carrying into effect the intended settlement, that the commercial laws of Great Britain (present or future) should be in force in Ireland by Acts, to be passed by the Parliament of Ireland for the same time and in the same manner as in Great Britain.\*

Second set  
of Com-  
mercial  
Proposi-  
tions sub-  
stituted for  
first.

The second set of Propositions were adopted by the British Parliament, but in the Irish House of Commons failed to secure adequate support, and were consequently abandoned. Flood and Grattan (disagreeing on other questions) joined

Commer-  
cial Pro-  
positions  
with-  
drawn.

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only one on which the whole plan can be justified, is that I mentioned in the beginning of my letter—that for the future the two countries will be to the most essential purposes united.’

\* Both sets of Propositions are printed in the appendix to, volume iii. of *Grattan's Life*, by his Son.

in opposing them. The main objection was, that they infringed upon the independence of the Irish Parliament, and abridged its existing rights; also that upon commercial matters and the disposal of the hereditary revenue, they made it subject to the British Parliament.

Grattan's  
objections  
to the  
second set  
of Proposi-  
tions.

Grattan arraigned the second set of Propositions as (what he termed) 'an incipient and a creeping Union': they established, he said, one will in the general concerns of commerce and navigation, and reposed that will in the Parliament of Great Britain: it would be an union where the Parliament of Ireland, while it preserved its existence, would have lost its authority, and its people would have to pay for a parliamentary establishment without any proportion of parliamentary representation. What was contemplated, he argued, was not suspension, but transfer, of legislative powers; not surrender of trade, which might be a matter of compact, but surrender of the government of trade. He denied that Parliament was competent to make the transfer. The limited trustees of a delegated power cannot surrender, diminish, or derogate from those privileges they breathe but to preserve. With respect to the provision for appropriating the hereditary revenue, he objected that it was equivalent to a perpetual money bill for the Crown.\*

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\* Speech of Grattan of 12th August, 1785. How far the provisions of the Propositions were in character consti-

Objections were also made to the Commercial Propositions that they were in themselves inexpedient, because placing the pecuniary interests of Ireland too much in the power of England. But the objections which had most effect were those of a constitutional character. Ireland was to surrender an extensive portion of the jurisdiction of her Parliament: to lose her right to apply revenues which were legally within her disposition: to confine herself to a narrow and inglorious sphere. She was, Grattan exclaimed, to be bribed out of her constitution by her commerce.\*

The failure of the Commercial Propositions on such grounds was an event of extreme importance. It afforded a striking instance of collision, not merely of sentiment but of action, between the Parliament of Great Britain and the Parliament of Ireland. It suggested the possibility of a similar conflict in respect of even more important matters—such, for instance, as the maintenance of the military and naval forces, provision for the various departments of the public service, every matter, in fact, which, involving the general interests of the whole empire, had to come before the Legislatures of both kingdoms. Also it proved that it was

Other objections to them.

Effect of failure of Commercial Propositions.

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tutional as well as commercial was at a later date a subject of dispute. (See Note V of Appendix.)

\* Grattan's *Speeches*, p. 113: Dublin, 1845.



useless to attempt to pass through the Irish House of Commons measures that proposed to withdraw from its legislative jurisdiction departments of public affairs in which the interests of Ireland were concerned, or that might tend to subordinate its Parliament to the Parliament of Great Britain, for if any such could have been expected to conciliate acceptance, it was those which had been rejected, accompanied, as they were, with substantial commercial benefits in return.

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## CHAPTER XIV.

### REVIVAL AND PROGRESS OF THE POLICY OF UNION.

[1785-1798.]

ABOUT the time when the Commercial Pro-<sup>Policy of  
Union re-  
vived.</sup>positions were first brought forward in England, the policy of an union of Ireland with Great Britain found advocates. From 1707, when the project was proposed by the Irish Parliament, and discouraged by Queen Anne and her Ministers, there had been no discussion of the subject in either the British or Irish Parliament. That the question revived in 1785 was due to the difficulties which in England obstructed Pitt's first commercial scheme. It could not be denied that Ireland had still grounds of complaint in reference to the subjects which the Propositions dealt with, and if they were to be rejected, some other remedy, it was generally admitted, ought to be found.

In considering what, under these circumstances, was the policy most expedient for Great Britain and Ireland to adopt, Union was suggested by the example of Scotland. In that country, before it became united with England,<sup>Example  
of Scot-  
land.</sup>

commerce had been much more restricted than it was after 1780 in Ireland; and the consequent poverty and discontent of the Scotch people, whom English legislation jealously excluded from trade with the colonies, had been then extreme. Commercial freedom and unfettered intercourse between England and Scotland were conferred by the Union. For a long time these benefits produced little result in the latter country, attention being diverted from them by the desire of national independence, and the hope of regaining it. In 1745, however, with the failure of the House of Stuart to recover the Crown, the last hope of a separate Parliament for Scotland passed away; and from that time its people began to make use of the advantages, commercial and social, opened to them by their incorporation with a more powerful kingdom. Progress had been, in some degree, checked by the war against the American colonies, and the consequent obstacles in the way of trade with them; but, notwithstanding this hindrance, increased wealth and improved civilization were, before the period at which we have arrived, everywhere manifested in Scotland, and the nation generally had come to acknowledge the great gain derived, and the still greater expected to be derived, from its having been, through the Union, allowed to share in the prosperity of England.\*

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\*As to the union of Scotland with England, and its

Another influence besides that furnished by the example of Scotland tended, in 1785, to recommend the policy of Union for Ireland. During the previous part of the eighteenth century the weight of literary and scientific thought inclined in that direction.\* Indeed, there is little or none upon the other side. It may, however, be sufficient to refer to two of its philosophic advocates, not merely because of their superior eminence, but of the importance of the reasons assigned by them—Montesquieu and Adam Smith.

Literary  
advocacy  
of Union.

‘Were I an Irishman,’ said the former, ‘I should certainly wish for an union between Ireland and England; and as a general lover of liberty I sincerely desire it; and for this plain reason, that an inferior country, connected with one much her superior in force, can never be certain of consti-

Montes-  
quieu.

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subsequent effects upon the condition of the Scottish people, see Sir Walter Scott’s miscellaneous works, vol. xxiv., pp. 104, 105, and vol. xxvi., p. 436; and Dundas’s speech in support of the Irish Union, 7th February, 1799.—*Parl. Hist.*, xxxiv., 354-7. See also Note W of Appendix.

\* In the debates at the time of the Union, reference was made to the authors who had advocated Union. (See Note X of Appendix.) Pitt merely in general terms referred to them. After saying that it could not be disputed that his measure would augment the general force of the Empire, and that there was no statesman in any court in Europe so ill-informed as not to know it would be increased by consolidating the strength of the two kingdoms, he added that ‘every writer of any information on the subject had used the same language.’

tutional freedom unless she has, by her representatives, a proportional share in the legislature of the superior kingdom.’\*

Adam  
Smith.

Smith, taking a similar view, but offering different reasons, pointed out that the result of the union of Scotland with England had been to terminate invidious social distinctions; and that in Ireland, in like manner, union might do away with equally invidious distinctions of race and religion to which events had there given rise. ‘Without an union,’ he remarked, ‘the inhabitants of Ireland are not likely, for many ages, to regard themselves as one people.’†

Union ad-  
vised by  
Associa-  
tion of  
Scotch and  
English  
Merchants

Of the persons who, about the date of the Commercial Propositions, advised union as the best means of adjusting the commercial relations between Great Britain and Ireland, none can be considered to have possessed more authority and influence than an Association of Scotch and English merchants which was formed in London to oppose Pitt’s first suggestions in reference to the subject, upon the ground that they favoured the interest of Ireland at the expense of the interest of Great Britain. In a statement drawn up by this Association they stated their opinion that the difficulties affecting trade and commerce with

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\* These words were addressed by Montesquieu to Lord Charlemont. (See Hardy’s *Life of Charlemont*, 2nd ed., vol. ii., p. 70.)

† *Wealth of Nations*, vol. iii., ch. 3.

Ireland would be taken away by 'a real union under one legislature.'\*

About three years after the date of the Commercial Propositions, another disagreement between the Parliaments of Great Britain and Ireland again drew attention to the inconveniences which resulted, and to others which might result, from their separate and independent action. This was in connection with the question of the Regency. In 1789 the King was affected by mental infirmity. During the continuance of his illness who was to exercise the royal authority? The British Parliament held that it was within its province to select the person, and to define the power which he was to possess. Accordingly the House of Commons selected the Prince of Wales, and prescribed the rights and duties of his office. For these purposes it passed a Regency Bill. On the other hand, the Irish Parliament treated the Prince of Wales as right-fully entitled to act with the same authority as his father might have done; and, imposing no restrictions upon his rights, invited him to assume the government of Ireland during the continuance of the King's illness, and, under the style and title of Prince Regent, in the name and on behalf of

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\* The President of this Association was Wedgewood, the celebrated manufacturer of earthenware: Mr. Peel, father of Sir Robert Peel, the Prime Minister, was a member of it. See *Grattan's Life*, by his Son, vol. iii., p. 249.

his Majesty, to exercise the powers of the Crown. While the Regency Bill was in the House of Lords in England the King recovered. Thus the conflict between the British and Irish legislatures was averted. Had it not, in this or some other mode, been brought to an end, the Prince would in Ireland have possessed all the prerogatives of a king, in Great Britain only such of them as Parliament might have endowed him with.

Unionsug-  
gested by  
Catholic  
question.

The evil effects of any conflict between the Parliaments of Great Britain and Ireland, and the likelihood of conflict, so long as they were independent of each other, were arguments in favour of the policy of union, which connected themselves with the interests of both kingdoms. But in 1792, and for some time previous to that date, another motive that had reference almost exclusively to Ireland began to recommend this measure to statesmen. Roman Catholics were then, and for a long period before had been, excluded from the Irish Parliament, and from voting for members of the House of Commons. To relieve them from these disabilities a movement was initiated, nearly contemporaneously with the agitation in 1780 for legislative independence. It had found much support, and had been constantly gaining increased strength; but was at the same time encountered by powerful opposition. Its adversaries argued that in Ireland the vast majority of the people were of the Church of Rome. If Catholics were admitted to the par-

liamentary franchise, the representation of the cities and counties would therefore be at once in the hands of the Catholics: after some time the system of election in small boroughs would be reformed, and then they would not differ from the counties in which they were situate; so that ultimately the Catholic interest was certain altogether to preponderate in the House of Commons. But there had been (it was said) one Catholic Parliament, that of James II., and its conduct warned against repeating the experiment; for it had attempted a revolution in the ownership of landed property, and had aimed at working out the attainder of more than two thousand Protestants. Such objections to the concession of the elective franchise and of parliamentary representation to the Catholics were necessarily powerful with a Parliament in Ireland composed solely of Protestants. They would, it was seen, cease to be of force in an united legislature, where the Irish Catholic representatives would be completely outnumbered by the Protestant representatives from England and Scotland, and where local prejudices and dissensions would be merged in the more elevated views of an imperial policy.\*

Considerations of this character seem to have been those which first induced Pitt to favour the Pitt begins to favour Union.

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\* How far this line of reasoning was well-founded is considered in Note G of Appendix.



Union of Ireland with England. In 1791, the question of emancipating the Catholics from their Parliamentary disabilities came into especial prominence in Ireland, and was discussed there with great difference of opinion, and much acrimony and angry feeling of the contending parties. English statesmen, who had for some time turned their attention away from Irish affairs, were forced to reflect upon the peculiar circumstances of the country, and to examine what policy would best tend to reconcile the conflicting interests and claims which divided the people. On the 18th of November, 1792, after previous correspondence with the Irish Government, Pitt, writing to Lord Westmorland, the Lord Lieutenant of Ireland, expressed his own views upon the subject in the following terms: . . . 'The idea,' he said, 'of the present fermentation gradually bringing both parties to think of an Union with this country has been long in my mind. I hardly dare flatter myself with the hope of its taking place; but I believe it, though itself not easy to be accomplished, to be the only solution for other and greater difficulties. The admission of Catholics to the suffrage could not then be dangerous. The Protestant interest in point of power, property, and Church Establishment, would be secure, because the decided majority of the supreme legislature would necessarily be Protestant, and the great ground of argument on the part of the Catholics would be done away, as, compared

with the rest of the Empire, they would become a minority.\*

Several years, however, elapsed before Pitt or his English colleagues actively intervened to promote the cause of Union. This fact, it seems to me, is established by the testimony of Lord Clare, who, during the same period, continually urged the expediency of the measure. Speaking in 1800, a year after the propositions for uniting Ireland with Great Britain had been first brought forward by the Government, he said: . . . 'I make no scruple to avow, that in every communication which I have had with the King's ministers on Irish affairs for the last seven years, I have uniformly and distinctly pressed upon them the necessity of Union, as the last resource to preserve this country to the British Crown. I pressed it without effect, until British Ministers and the British nation were roused to a sense of the common danger by the late sanguinary and unprovoked rebellion.'

No exertion to carry Union until after rebellion of 1798.

But had a different course been adopted; had Pitt introduced, in the Irish Parliament, at an earlier date than he did, a Bill to carry out the ideas suggested by Lord Clare, and, as it would seem, approved by himself, there is no reason to think that he would have succeeded. He had failed to carry the

Difficulties in the way of Union in Ireland.

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\* Letter of Pitt to Westmorland, Nov. 18, 1792, cited by Lecky, *History*, vol. vi., p. 513.

Commercial Propositions. Those who opposed them in Ireland did so because, upon certain subjects, they subordinated the Irish to the British Parliament; they would still more have resisted an Union with Great Britain which, instead of merely restricting, would necessarily terminate altogether, national independence. Pitt, in the letter to Lord Westmorland already cited, speaks despondingly of the likelihood of the policy of Union becoming acceptable. Its parliamentary supporters in 1785 expressed similar opinions; and the Duke of Rutland, at that time Lord Lieutenant of Ireland, went so far as to declare that the man who should attempt in Ireland to carry the Union into execution would be tarred and feathered.\*

In Eng-  
land also.

In England also, Union, if brought forward in Parliament, would have experienced opposition. The British and Irish legislatures could not be fused together without admitting into the United Parliament Irish Peers and Commoners. It was uncertain what their number in that event would be, but it could not be trifling; and it was equally uncertain what opinions they would support. Hence no political party desired to introduce an

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\* This was stated by Watson, Bishop of Llandaff, in the debate upon the Union in the British House of Lords in 1799. Wilberforce and Lord Lansdowne (better known as Lord Shelburne), like the Duke of Rutland, thought Union impracticable. (See Lecky, *History*, vol. vi., p. 404.)

unknown force which, even if weak in itself, yet might be adequate to give preponderance to whatever side it happened to choose.\*

Beside the motives to delay supplied by these difficulties, it is to be noted that in 1793, the year succeeding that in which Pitt had expressed a favourable opinion of the policy of Union, one of the objects which such a measure was expected to facilitate had been, in a considerable degree, obtained from the Irish Parliament. Roman Catholics were then in Ireland relieved from all disqualifications as parliamentary electors. This concession, both by what it granted, and by the evidence it afforded that the Irish Parliament was more superior to local fears and prejudices than had been supposed, tended to remove some of the objections to the existing legislative system.

Parliamentary franchise conceded to Catholics, 1794.

The Rebellion which, according to Lord Clare, finally decided the ministers and people of Great Britain to adopt Union with Ireland as a measure to be carried into effect, did not assume the form of open war before the month of May, 1798. The actual outbreak was, however, only a final

Causes which, before the rebellion, predisposed to Union.

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\* In 1792 Burke regarded the Union with Ireland as 'next to impossible.' 'To it,' he says, 'neither nation (*i. e.* neither England nor Ireland), nor any sect or party in either, has shown the least inclination.' (*Paper On the State of Ireland*, written in 1792. *Correspondence*, vol. iv., p. 65.) In the same Paper he seems to doubt that Pitt could desire to see from 50 to 100 members from Ireland in the British House of Commons.

development of designs previously prepared and matured, and it was preceded by other events which, if we would ascertain from what causes came the immediate impulse to the policy of this time, must be taken into account just as much as the outbreak itself. Of these the most important were, the detection of conspiracies in Ireland, formidable from the energy and abilities of those concerned in them, for the purpose of establishing a separate and independent State, and an attempt which, induced by the solicitation of some of their leaders, the French Republic made, in December, 1797, to land an invading army upon the coast of Munster.

Weakness  
of existing  
connection  
between  
Great Bri-  
tain and  
Ireland.

A combination of this character—foreign war in concert with domestic treason, and both seeking to sever Ireland from Great Britain—naturally drew the attention of English Statesmen to the nature of the connection between the two countries. Were the ties which bound them together adequate to resist the assaults of such adversaries? If they were, would they stand the additional strain which, if there should arise disagreement between the Parliaments that represented them, would be imposed? Not merely in 1798, but for, at least, the two immediately preceding years, these questions pressed for answer and compelled consideration of the subjects to which they related. Distrust of existing constitutional arrangements, doubts as to their stability and permanence, such as were suggested imme-

diately after the legislative system of 1782 was conceded, and had been also entertained during the disagreements of the Parliaments of Great Britain and Ireland respecting the Commercial Propositions and the Regency question, began to revive, and to take more general effect than they had ever done before. It was seen that, whatever might at home be thought concerning the nature of the connection between the two countries, their foreign enemies acted upon the supposition of its weakness, and had therefore endeavoured to strike against it as a vulnerable point.

If peace had at this time come, these considerations would probably have failed to produce any practical result. In a period of war, and especially during the war then waged, statesmen could not with prudence disregard them. England had assumed a position among the European kingdoms in league against France, which drew upon her the especial enmity of this great military power. Against such an antagonist every possible precaution was needed; if there were any defect in the political system of the British Empire, which tended to diminish its means of defence, it was indispensable to amend it. Could, then, the relations between Great Britain and Ireland be allowed to continue as they were? The crisis demanded consolidation of resources, unity of counsel, unity of action; but so long as the two kingdoms remained independent of each

War renders the weakness important.

other, neither consolidation nor unity could be ensured. If, as was then thought, the same cause rendered their connection uncertain, would less, it was asked, than its total removal meet the exigency of the case?

Decisive  
motive to  
Union.

Union, it was admitted, was a policy not free from objections, and obstructed by grave difficulties; but to the safety of the empire all objections and difficulties must give way. Whatever else the measure might fail to accomplish, this object it would certainly tend to promote. At least the connection between the two countries would be placed out of reach of the peculiar dangers which menaced it. The weakness caused by distinction would be removed. Instead of being, as they then were, isolated and separate, the constituent parts of the Empire would be fused into one mass. Ireland would present no more opportunity or encouragement to foreign enemies than Scotland or any other place in Great Britain. If, nevertheless, invasion should be again attempted, the resources of the whole Empire, concentrated in one paramount authority, would be available for its defeat.

CHAPTER XV.

THE POLICY OF UNION ADOPTED BY THE  
ENGLISH GOVERNMENT.

THE statement of Lord Clare—which is cited in the last chapter—that it was not until the rebellion of 1798 the English Ministers determined to act upon the policy of Union—appears to be supported by whatever evidence exists bearing upon the subject. In the month of September of that year, Pitt and his colleagues were concerned (as it seems to me for the first time) in preparing measures to carry out this policy. It was then a matter of much debate among those thus engaged whether a concession to the Irish Roman Catholics of the right to sit in Parliament should not be one of the provisions to be offered to the British and Irish Parliaments, as an accompaniment to the intended Union.

Some time before the month of January, 1799, when the Parliaments of Great Britain and Ireland were to meet, the propositions to be submitted to these assemblies on the part of the Government were decided upon.\* As finally settled, they did

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\* For the proceedings connected with the preparation of the Bill for the Union, as they appear in the *Cornwallis and Castle-  
reagh Correspondence*, see Note Z of Appendix.

very brief  
simply written  
Pitt stress  
on next  
Ch  
Dash  
Paul



not contain any reference to the Catholics, who were to remain in the same position as they then were. The adoption of this course was caused, not by hostility to their claims (for Pitt favoured them), but by a desire to conciliate the support of those who opposed them, without which, it was thought, the enactments requisite for the Union could not be obtained from the Irish Parliament. It was also due to the advice of the Irish Chancellor, Fitzgibbon, then Earl of Clare, who continued to be, as he had always previously been, unwilling to confer power upon Catholics.\*

**Lord Clare** The influence of Lord Clare with Ministers in England was greater than that of any other person Irish by birth holding office in Ireland. This followed from his official position, his abilities, and force of character. Clear and determined in his opinions, he adhered to them firmly. Popular applause he regarded little, popular censure less. On every occasion of difficulty his courage, self-reliance, and sagacious discernment, were conspicuous. Inheriting affluence, yet of the middle class, educated a Protestant, yet of a Catholic family, he had early come

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\* In 1793 Lord Clare did not oppose the Bill admitting the Irish Catholics to the electoral franchise; but he explained that he abstained because, although he 'considered the Bill to be in principle unwise and pernicious,' yet, 'after what had passed both in Great Britain and Ireland upon the subject, he would not be responsible for the immediate consequences of rejecting it.'

in contact with the interests which contended for supremacy in his native country. So far, therefore, as regards intellectual power and knowledge of the social system, he was well fitted to act the part of a political adviser; but unfortunately with his great qualities were allied others which in no small degree hindered a sound judgment. He was haughty, overbearing in temper and manner, disdainful to conciliate, and impatient of contradiction or dissent. There are no traces in his speeches of philosophic study or reflection; and, as not seldom happens when strength of mind is neither enlarged nor softened by such influences, his opinions were deficient in breadth and generosity.

When the Parliament of Great Britain met, a message was delivered from the King, and read in both Houses. The message did not expressly mention the intended project of Union, but it so referred to recent events, especially the efforts of the enemies of Great Britain to separate Ireland, and contained such recommendations, that it was understood to suggest some measure of the kind. It was expressed in the following terms: . . .  
'His Majesty is persuaded that the unremitting industry with which our enemies persevere, in their avowed design of effecting the separation of Ireland from this kingdom, cannot fail to engage the attention of Parliament; and His Majesty recommends to consider the most effectual means of counteracting and finally

Message  
from the  
King to  
the British  
Parliament.

defeating this design ; and he trusts that a review of all the circumstances which have recently occurred (joined to the sentiment of mutual affection and common interest) will dispose the Parliaments of both kingdoms to provide, in the manner which they shall judge most expedient, for settling such a complete and final adjustment as may best tend to improve and perpetuate a connection essential for their common security, and to augment and consolidate the strength, power, and resources of the British Empire.'

Sheridan  
moves an  
amend-  
ment to the  
Address.

In the House of Commons a formal Address of thanks for the message having been proposed, Sheridan, interpreting the message to favour Union between Great Britain and Ireland, at once announced his hostility to any policy of that character, and insisted upon the finality of the settlement of 1782. Fox had, at this time, ceased to attend Parliament, and Sheridan, in his absence, came forward on behalf of the political party then in opposition. It was the leaders of this party who had made to the Irish Parliament the concession of legislative independence, which formed the basis of the Constitution of 1782, and those who had been the authors of the consequent enactments were naturally indisposed to admit their failure or imperfection. Sheridan, himself an Irishman, and accustomed to act in political association with the party of nationality in Ireland, was impelled in the course he took by the additional motive of sympathy

with whatever appeared to elevate and give importance to the country.\* To place on record his views, he therefore moved an amendment to the Address, which, after declaring that it was with regret the House then, for the first time, learned that the final adjustment of 1782 had not produced the effects expected, implored His Majesty not to listen to the counsel of those who should advise or promote an union of the legislature of the two kingdoms at that crisis, and under the circumstances of the empire at that time.

When supporting the finality claimed in the amendment for the arrangements made in 1782, Sheridan contended that Great Britain had then admitted what was asserted by the Irish Parliament, that there was no power whatever competent to make laws for Ireland but the Parliament of Ireland. He admitted that the King's Ministers were actuated by the motive of desiring to avert separation; their policy, he said, originated in fear of the ambitious designs of France. But he could not agree with them in regarding those designs as a reason for desiring Union. They seemed to him to furnish an argument against it, since any measure of the kind

Sheridan's  
speech.

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\*According to the report of Sheridan's speech in the *Annual Register* for 1799 (p. 204), he referred to his connection with Ireland in the following terms . . . 'his dear country, Ireland, had claims upon him, which he was not more proud to acknowledge than ready, to the full measure of his ability, to liquidate.'

would revive in Ireland recollections of jealousy and distrust, and, by exhibiting internal disagreement, would be sure rather to encourage their external enemies than to drive them from (what he allowed to be) their settled purpose.

Pitt's reply.

Pitt, when he came to speak, replied to Sheridan. He observed that the amendment called upon the House to declare that it would not deliberate upon the matter. To justify such a resolution, the mover was bound to show that the then state of Ireland required no remedy, or that, if it did, a better might be proposed than that which has an union for its basis; or that an union must be in its own nature such an evil that it ought not to be deliberated upon at all. But Ireland was, he said, subject to great and deplorable evils which had a deep root, for they lay in the situation of the country itself, in the unavoidable separation between certain classes, in the state of property, in religious distinctions. What was the remedy? An impartial Legislature, standing aloof from local party connection, sufficiently removed from the influence of contending factions to be advocate or champion of neither. At the settlement of 1782 there was, he contended, something left to be done after the Legislature of Ireland gained its independence. He admitted that England had exhibited to Ireland a jealousy concerning the growth, produce, and manufacture of various articles; but all such jealousies would be buried by the plan

to be brought forward. He then pointed out that whenever there are two independent Parliaments in one empire, there is no security for a continuance of their harmony and cordial co-operation. As an instance of the fact of disagreement between the Parliaments of Great Britain and Ireland, he referred to what took place upon the question of the Regency. Why might not such difference occur again? A party in England may give to the throne one species of advice by its Parliament: a party in Ireland may advise directly opposite upon the most essential points that involve the safety of both. What, he asked, would have been the consequence to both England and Ireland, had the dissensions in the Irish Parliament been the same in point of force against the executive government, since the commencement of the war then being carried on, as they were at the time the Commercial Propositions were rejected?

On a later day (January 31, 1799) the discussion upon the King's message was renewed; and Pitt moved the adoption by the House of Commons of eight resolutions affirming the expediency of uniting Ireland with Great Britain, and defining the arrangements to be connected with the Union.

Second  
speech of  
Pitt, Jan.  
31, 1799.

In the interval which had elapsed since his former speech, the Irish House of Commons had declared against the policy of Union. He therefore began by explaining, that while he admitted the right of the Parliament of Ireland to express

its opinion, as it had done, he felt that, as a member of the Parliament of Great Britain, he also had a duty to perform, and that was to state distinctly the principles of the measure he intended to propose, and the grounds upon which it appeared to him to be entitled to approbation. When it was understood, the Irish Parliament could judge whether finally to accept or reject it. This course was the more necessary because the question involved many objects likely to be decided upon by passion, not judgment, and was one in which an honest but mistaken sense of national pride was likely to operate, and where, therefore, much misconstruction and misconception must inevitably happen. It rested, however, upon such clear, demonstrable grounds of utility, that even under the discouragement of the opinion expressed by the Irish House of Commons, he entertained a confidence that all that could be necessary for its ultimate adoption was, that it should be stated distinctly, temperately, and fully, and then be left to the unprejudiced, dispassionate, and sober judgment of the Parliament of Ireland. Upon the general principle on which the measure was founded, he was happy to observe, from what passed in the former debate, all agreed. This was, that a perpetual connection between Great Britain and Ireland was essential to the interests of both. What, then, was the situation of affairs which called them to the discussion of the subject? The connection has been,

and still is, the great object of the hostility of the enemies of the country. It was necessary to guard against the threatened danger. The settlement of 1782 left the connection exposed to all the attacks of party, and all the effects of accident. It left the two countries with separate and independent legislatures, connected only with these ties, that the third estate in both countries was the same, that the Irish Acts of Parliament required the assent of the British Crown, and that this was given under the Great Seal of Great Britain, and upon the advice of British Ministers. Such ties, he contended, were not sufficient in time of peace to unite the countries; in time of war to consolidate their strength against the common enemy; or to guard against local jealousies arising. In connection with this topic he referred to the disagreements between the two legislatures which had occurred; to the power they both possessed of discussing and deciding upon the great questions of peace and war, of alliances and confederacies; the possibility lest on these subjects their opinions and decisions should be at variance; the peril to the empire that must arise if they were. The present war, he said, which the Parliament of Great Britain considered to be just and necessary, might have been voted by the Irish Parliament to be unjust, unnecessary, perhaps even to be extravagant, and hostile to the principles of humanity and freedom. If this could happen,



what security have we, at a moment the most important to our common interest and common salvation, that the two kingdoms would have but one friend and one foe? Hence it is that there is no point on which our enemy thinks us more assailable than upon the nature of our connection with Ireland.

Speech  
continued.

From these observations, which drew arguments from the general interests of the whole empire, he turned to the peculiar circumstances of Ireland. His measure would, he said, communicate to Ireland all the commercial advantages which Great Britain possessed: it would open free communication between their respective markets: it would lead to a common use of their capital, and to its diffusion through the people of both nations: it would ensure for the weaker power the protection of the stronger against danger from enemies without or treason within: in a word, it would confer upon Ireland a full participation in the wealth, the power, and the stability of the British Empire.

Speech  
continued.

In the course of his observations he pointed out the necessity of measures to meet the wants, and remedy the defects, of the social system in Ireland. Its people were divided into hostile sects; animosities continued between the settlers and original inhabitants; ignorance and want of civilization abounded, and Jacobin principles were prevalent. The Catholic complained of grievances; and the Protestants viewed their claims with apprehen-

sions. The cure, he urged, was—what he had in his former speech suggested—the formation of a general imperial legislature, free alike from terror and from resentment, removed from the danger and agitation, uninfluenced by the prejudices, and uninflamed by the passions, of that distracted country. To ask the rejection of such a measure, because it put an end to independence, would be an appeal to an erroneous and mistaken sense of national pride. Did those who made it mean that in any humiliating sense, when the governments of two separate countries unite in forming one more extensive empire, the individuals who composed either of the two former narrow societies are afterwards less members of an independent country, or to any valuable or useful purpose less possessed of political freedom or civil happiness, than they were before? If the principles suggested had been acted upon by their forefathers, not one of the countries the most proud of their present existing independence would exist in the state in which it then stood. In the different unions which have formed the principal states of Europe, had their inhabitants become less free, had they less of which to be proud, less scope for their own exertions, than in their former situation? If a nation has not adequate means of protecting itself without the aid of another, and that other should be neighbouring and kindred, speaking the same language, with laws, customs, and habits the same in prin-

ciple, but carried to more perfection, with a more extensive commerce, and more abundant means of acquiring and diffusing national wealth, does an union under such circumstances deserve to be branded as a proposal for subjecting to a foreign yoke? Is it not rather the free and voluntary association of two countries, which join, for their common benefit, in one empire, where each will retain its proportional weight and importance, under the security of equal laws, reciprocal affection, and inseparable interests, and which want nothing but that indissoluble connection to render both invincible?

‘Non ego nec Teucris Italos parere jubebo  
Nec nova regna peto: paribus se legibus ambæ,  
Invictæ gentes eterna in fœdera mittant.’\*

The opinion of the House upon the resolutions thus submitted for its approval was tested by a division upon the question that the Speaker do leave the Chair in order that the resolutions might be considered in Committee. The numbers were: ayes, 140; noes, 15. Ultimately the Resolutions, as proposed, were adopted by the British House of Commons, and afterwards by the British House of Lords.

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\*The limits of this treatise do not admit of a more extended reference to this speech, which must ever be ranked among the highest examples of oratorical excellence.

CHAPTER XVI.

PROCEEDINGS IN THE IRISH PARLIAMENT.

[1799.]

THE Speech of the Lord Lieutenant at the <sup>Speech of</sup> meeting of the Irish Parliament, in 1799, <sup>Lord Lieu-</sup> <sup>tenant,</sup> <sup>1799.</sup> was to the same effect as the King's message to the English Parliament. After referring to the industry with which the enemies of the Empire persevered in their design of separating Ireland from Great Britain, it stated the King's anxious hope that this consideration, joined to the sentiment of mutual affection and common interest, might dispose the Parliaments in both kingdoms to provide the most effectual means of maintaining and improving a connection essential to their common security, and of consolidating, as far as possible, into one firm and lasting fabric the strength, the power, and the resources of the British Empire.

The Lord Lieutenant at this time was the <sup>Lord Corn-</sup> Marquis Cornwallis—a nobleman of high <sup>wallis.</sup> reputation, both as a soldier and a statesman. He was himself in favour of the policy of Union, and had, from the time he came (about six months

before the date of the Speech) to Ireland, advocated it in his intercourse with the Peers and members of the House of Commons, who gave a general support to the Government.

Address in  
Commons.

When the speech was read an Address in answer was moved in the Commons, which promised the fullest consideration to its recommendations. An amendment was at once brought forward which, if carried, would have pledged the House against the Union. It sought to insert the words: '... but maintaining the undoubted birthright of the people of Ireland to have a free and independent Legislature resident within that kingdom, as it was asserted by its Parliament in 1782, and acknowledged and ratified by his Majesty and the Parliament of Great Britain upon the final adjustment of the discontents and jealousies then prevailing.'

Amend-  
ment to  
Address.

The amendment became the subject of a lengthened debate, and was in the end rejected, but only by a majority of one, 105 voting for and 106 against it. When, however, the Address itself came to be considered, the paragraph which contained the promise that has been referred to, being supposed to express in an indirect manner approval of Union, led to a renewal of the former discussion. Then by another amendment it was proposed to expunge the paragraph; and this motion was attended with a different result from the former proceeding, 104 now voting with and 109 against the Government.

In the Lords an Address, which was moved Address in House of Lords. in answer to the Lord Lieutenant's speech, and which engaged to consider the best means of improving the connection between the two kingdoms (describing it as essential to their common security), and of consolidating into one firm and lasting fabric the power and resources of the British Empire, was carried by a majority of 35; the votes for being 52, and the votes against 17. Some amendments adverse to the policy of Union which were proposed were defeated.

The debates and divisions in the Commons The Opposition in the House of Commons. disclosed that against any scheme of Union there was enlisted a remarkable combination of parliamentary ability. Grattan at the general election, when the existing House was returned, had not sought a seat. Flood, his great rival, had died. But while their support had been thus withdrawn from the cause of national independence, Bushe and Plunket, then recently returned to Parliament, had brought to its defence eloquence and legal attainments of the highest order, and afforded compensation for the loss. The most important aid, however, to the Opposition came from the co-operation, for the first time, of the Speaker of the House of Commons, Foster—who, although he had been one of Pitt's parliamentary supporters, now came forward to resist his measures, and cast in the scale against them the weight of a character without reproach, of a most accurate knowledge of every

constitutional and financial question, and of an advocacy which his power of argument and of well-arranged and lucid statement rendered eminently persuasive.\*

Lord  
Castlereagh.

The conduct of proceedings in the House of Commons on the part of the Government devolved upon Lord Castlereagh, who had not long before been appointed Secretary to the Lord Lieutenant. Almost alone this young nobleman (he was only in his thirtieth year) confronted the adversaries who, formidable by superiority of number, no less than by intellectual pre-eminence, had arrayed themselves against the measures entrusted to his charge. Inferior in debate to the trained and practised orators whom he had to encounter, speaking without any rhetorical art, he was sustained through the unequal conflict by a rare union of qualities fitted to influence a popular assembly. Cautious and dispassionate in deciding upon the course to be pursued, no provocation could disturb the equanimity, no danger or difficulty depress the courage, with which he persevered in his determination, when once it had been formed. The charm of habitual courtesy, of manners the most dignified and graceful, was enhanced by a noble

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\* Foster, before he was elected Speaker, had been Chancellor of the Exchequer in the Irish Parliament. In 1785, he had strongly advocated Pitt's Commercial Propositions. He is the only Irish member of whose opposition Pitt took notice in his speeches in 1799.

form and countenance. By his party he was followed with affectionate obedience.\*

When the state of parties in the House of Commons was such as has been described, <sup>A Re-  
gency Bill  
proposed.</sup> Ministers, defeated upon the Address, had to consider what course to pursue. If they brought forward their intended proposals, they must contend against greater strength. It was, accordingly, decided not to proceed with them further during the Session. On the other hand, the Opposition, encouraged by success, sought to strengthen their position by removing a cause of objection to the existing legislative system, viz. the probability of renewed disagreement between the British and Irish Legislatures upon the question of Regency.† With this object they brought forward a Bill (afterwards defeated), which would have provided that, in case of a Regency, the royal authority in Ireland should be administered by the person appointed in England, and with the same powers. In committee upon this Bill, Foster—who, being in the chair of the House of Commons during the debates upon the Address, could not then intervene—availed himself of the opportunity, and spoke in answer to the statement with which Pitt accompanied the introduction of his resolutions in favour of Union in the British House of Commons. Foster's speech contains within itself,

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\* See Note AA of Appendix. † See Note BB of Appendix.



probably, the most complete summary of the case made by the Opposition.

Speech of  
Foster.

Foster commenced, as Sheridan had done, by asserting that the settlement of 1782 was then intended to be a final arrangement, and by entering into an examination of the proceedings in that year in both Parliaments.\* He then defended himself from the charge of having in 1785, by supporting Pitt's propositions, admitted that the Constitution of 1782 required to be supplemented. These propositions were, he said, commercial, not constitutional; and he had at that time stated that he should think himself unworthy of a seat in parliament, or of the name of an Irishman, if he could consent to barter an atom of the constitution of his country for all the commerce in the world; indeed, so satisfied was he that the Commercial Propositions did not violate it in the smallest degree, that he could not repress his surprise at their being by anyone supposed to do so.† Now even the Commercial Propositions were not, he urged, needed, since subsequent legislation had accomplished what was formerly sought, and the mutual interest, common concern, and brotherly affection of the two kingdoms, had effected voluntarily what was

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\* Pitt had alleged that more was intended in 1782 than the settlement of that date (see page 154, *supra*). On this subject, see Note U of Appendix.

† See, as to the nature of the Commercial Propositions, Note V of Appendix.

then desired to be made matter of compact. A Navigation Act, an East India Act, and other laws, were since passed, which, he said, extinguished commercial jealousy, and each Legislature had been effectually employed in directing the common concerns of trade. What he had argued in 1782 was, in effect, that two independent Legislatures and unsettled commerce could not exist with safety; but the two independent Legislatures must exist, therefore they were bound to settle the commerce; and accordingly it had, he contended, been afterwards settled.

These considerations were offered to answer the reasoning which would found the defence of the proposed measure of Union upon the existing commercial relations of the two countries. Foster next came to the arguments assumed to be supplied by the danger of disagreement between the Parliaments. The difference as to the Regency, he suggested—if the King's illness had continued—would have been arranged. The Bill then before them would prevent the difficulty occurring again. And were it otherwise, was the Constitution to be sacrificed, the country reduced to the condition of a colony, because of theoretic inconvenience, which might be the consequence of such disagreement? But war and peace, not Regency, might, it was said, be the point of disagreement. To this he maintained it was a sufficient reply that war and peace were not under the jurisdiction of the Legislature; they were within the prerogative of the Crown. If war

Foster's  
Speech  
continued.

were declared by the King, both England and Ireland became at war with the King's enemy: all that the Parliament of either could do in the matter was to refuse supplies; but of what use would that be, when the refusal could not make the kingdom stand clear of the hazards and losses of the war, in which the King's declaration necessarily involved it? Then as to treaties which did not concern peace or war—such, for instance, as adjust the course of trade—there was no more reason that England and Ireland should permanently disagree than that the two Houses of Parliament should do so. In both cases there would be motives strong enough to induce reconciliation. The real object which it was sought to attain by Union was not to meet the difficulties which he had alluded to; it was financial in character—to compel contribution in war, and to have the regulation of trade. If they could contrive, he said, to give the Minister the purse of the nation, without extinguishing Parliament, they would hear no more of Union.

Speech  
continued.

It was said that Union must augment the general force of the Empire. Were it really calculated to produce this effect, much, Foster admitted, ought to be sacrificed for such an object; but was it proved that it would? No, he said, the Unionists use general terms, make unsupported assertions, and speak as if there were no Union—as if Great Britain and Ireland were actually separate—and then they attribute

to their own project every merit, every advantage already enjoyed, as if it only could confer them, and as if the advantages did not already exist; whereas the case really was, that the kingdoms were so united as to confer on the Empire the whole of their strength. The consolidation, he asserted, of their resources was as firm as human policy and individual interest could make it. Would removing the Parliament to London raise one guinea, or give one soldier more for the defence of the nation? Must not the absenteeism it will create make Ireland poorer and weaker? And with respect to rebellion, could any Parliament sitting in Great Britain have developed the secret system of conspiracy, animated the loyal, and supported the executive, with the effect the existing Irish Parliament had done? The influence of a local Parliament was seen also in the case of the Volunteers, who had at once obeyed its advice. A Parliament, composed five parts in six of strangers, sitting in another country, could not have had the same influence with them.

In the course of his observations Foster alluded to the arguments for an Imperial Parliament, which were based upon the religious differences, and upon the supposed inferior civilization, of the people in Ireland; and pointed out, with respect to the former, that an Irish legislative assembly, deliberating at home, and acquainted with the circumstances to be considered, could just as wisely as the British Parliament judge of

Speech  
continued.

the course proper to be pursued ; and with respect to the latter, that a local Parliament, and the residence of the gentry, which would be a consequence of its continuance, must of themselves promote social improvement.

Speech  
continued.

In conclusion, Foster urged that those who had doubts were by those very doubts called upon to vote against a measure which, once granted, could never be recalled : that for the same reason even those whose conviction in its favour was clear ought still to vote against it if a majority, or even a respectable part of their countrymen, thought differently. Let all then, he said, combine and refuse the measure, but refuse it with calmness and dignity. Let not the offer of it lessen their attachment or weaken their affections to Great Britain ; and while they thus would prove that they were indissolubly connected with that kingdom—one in unity of constitution and unity of interest—let them revere and steadily preserve the Constitution which had given them wealth, trade, prosperity, freedom, and independence.\*

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\* Both Pitt and Foster entered into consideration of existing and proposed financial and commercial arrangements : the summaries I have given are confined to topics of a constitutional character. Foster, and afterwards Grattan, alleged that the Union was more likely to injure than to serve the trade and commerce of Ireland. (See Note CC of Appendix.)

## CHAPTER XVII.

### UNION.

WHEN, in 1799, the question of Union was brought forward in the Parliament of Ireland, the House of Commons consisted of 300 members. Of these, 64 represented counties (two for each county); 14 represented cities (two for each city); 220 represented towns and boroughs (two for each town and borough); and 2 the University of Dublin. A large proportion of the representation was in the patronage of individuals who nominated the members; a further portion was returned by the members of corporations, in which the right of membership was restricted to very few persons. As the owner of a freehold of the value of forty shillings had a vote, and as in Ireland the usual tenure of the tenants of lands was for a life or lives, the constituencies in the counties were, since the Catholics had been permitted to exercise the franchise, very numerous: so they were also in Dublin, Cork, and a few other towns. The nomination boroughs, or seats in them for a Parliament, were sold and bought openly.

Some proprietors of them had two or more boroughs or seats in boroughs.

Influence  
of the  
English  
Govern-  
ment in  
the Irish  
Parlia-  
ment.

For a lengthened period before the time when Pitt and his colleagues resolved to propose legislation for the purpose of uniting Ireland to Great Britain, it had been the object of the Ministers, who had been successively in office in England, to establish in the Irish Parliament a commanding influence for the British Government. Some circumstances in the constitution of the Parliament assisted the attainment of this object. The Peers and Members of the House of Commons were almost all of English or Scottish race; also their religious profession was, like that of the members of the English Parliament, Protestant. Hence there existed sympathy and agreement between the Legislatures of the two countries upon most important subjects. But with nations such ties bind—or at least bind effectually—only while there is no important diversity of interests, and no occasion for reciprocal discontents and jealousies. Such causes of division they are too feeble to resist. So soon, therefore, as the policy of Great Britain in reference to trade had awakened resentment in Ireland, the British Government, perceiving that popular impulses were operating on and might come to govern Parliament, had recourse to the exercise of patronage and the attraction of offices and pensions,\*

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\* See Note DD of Appendix.

as a counteracting influence. The same system continued when the original reasons for its adoption were removed; and the result was that, even after 1782, whoever was for the time being Prime Minister of Great Britain might count upon a majority in both Houses of the Irish Parliament as supporters of his measures.

When the question of Union was first submitted to the Irish House of Commons, the accustomed allegiance of its members to the British Government was, as we have seen, interrupted. Several causes concurred to produce this result. From 1707, when the proposal of Union made by the Irish Houses of Parliament had been treated with neglect by the British Government, the whole current of thought and feeling in Ireland had been turned to the acquisition of legislative independence. Irish writers and orators of eminence devoted their abilities to its advocacy. At length, in 1782, the rights contended for were won. The victory was hailed with universal exultation. Sixteen years had elapsed from that event, during which the Irish Parliament attained a political and intellectual eminence, of which its members were justly proud. Under these circumstances, it was to be expected that the first impulse with most of those who had to decide upon the proposals of the Government would be, to reject a scheme whose provisions were destructive of the Constitution which, obtained only after a severe and

Causes of  
defeat of  
the Go-  
vernment  
in 1799.



prolonged struggle, had been productive of such results. Powerful as the motives thus supplied were, they were aided by others of a very different character. These, from the mode in which the House of Commons was constituted, were not less effective than the former. Self-interest impelled many in the same direction as patriotism suggested. The small boroughs were to be all swept away; and up to this time nothing had been said of compensation to their owners. The purchasers of seats who, at the previous dissolution of Parliament, had bought upon the supposition of an octennial possession, were to be deprived of them, also without compensation. With these would coalesce representatives of places and interests which Union, even if beneficial to the community, must inevitably injure.\*

Change of  
opinion in  
Parlia-  
ment.

The Parliament which had met in January, 1799, was prorogued upon the 1st of June. It did not meet again until the 15th of January, 1800. When it reassembled, a majority of the House of Commons was found to be in favour of an Union. In the interval some new members, supporters of the Government, had been introduced in place of opponents who had vacated their seats by accepting the escheatorship of Munster, which in Ireland was used—as the

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\* See in Note EE of Appendix the estimate made by Lord Castlereagh of the money value of the loss which private interests injuriously affected would sustain by the Union.

stewardship of the Chiltern Hundreds was in England—to enable resignation of a seat; and some members had changed sides, and were now as prepared to vote for, as they had been before to vote against, Government.

To enter into an examination of the conduct of individuals at this crisis, and endeavour to ascertain what circumstances personal to themselves may be supposed or proved to have induced the course of action which they pursued, would, according to its intended scope, be foreign to the design of the present treatise, concerned only with the legislative systems in operation from time to time in Ireland, and the considerations which led to their original adoption or subsequent modification. One matter, however, which certainly contributed to the change of opinion now manifested, seems from its nature proper to be here mentioned. It was an addition to the measures originally intended to be introduced. In order to disarm the hostility of the patrons and others interested in the close boroughs, whenever they were to be wholly deprived of their right of representation, pecuniary compensation was to be granted.\*

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\* This was not the first time when it was proposed to give compensation because of the disfranchisement of boroughs. Pitt, in 1785, in the plan he brought forward for reform in the representation of the people of England, included a provision for the purpose, and explained the reasons which justified it. (See Notes FF and GG of Appendix.)

Speech of  
Lord Lie-  
tenant,  
1800.

The speech addressed by the Lord Lieutenant to Parliament, when it assembled, contained no allusion to the question of Union, as it was thought better to reserve the subject for a separate message. The leaders of the Opposition, perceiving what was designed, determined to anticipate the action of the Government, and, accordingly, moved in the House of Commons an amendment to the Address which was proposed in answer to the King's Speech. By the amendment it was sought to pledge the House to maintain the independence of the Irish Parliament. It was expressed in the following terms:— 'To assure his Majesty that his kingdom of Ireland is inseparably united with Great Britain, and that the sentiments, wishes, and real interests of all his subjects are that it should continue so united, in the enjoyment of a free Constitution, in the support of the honour and dignity of his Majesty's crown, and in the advancement of the welfare of the whole Empire : which blessings (it added) we owe to the spirited exertions of a resident Parliament, the paternal kindness of his Majesty, and the liberality of the British Parliament in 1782, and which we feel ourselves at all times, and particularly at the present moment, bound in duty to maintain.' The amendment was defeated by a majority of 42, the votes for being 96 ; against, 138.

As the House of Lords had been, in the previous year, favourable to Union, this division put

an end to any doubt that the measures of Government to effect it would be carried through the Irish Parliament. The Lord Lieutenant, therefore, on the 5th of February, sent to both Houses of Parliament the resolutions upon the subject which had been passed by the British Parliament in the previous year, and accompanied them with a message, in which he stated that he was commanded by his Majesty to lay the resolutions before the Houses of Parliament, and solemnly to recommend to their attention the great objects they embraced. Upon a motion that the House should resolve itself into a committee to take into consideration the message, Government obtained a majority increased by one from what there had been upon the Address, the numbers being—for the motion, 158, and against it, 115.

Message  
from Lord  
Lieuten-  
ant.

At a later stage of the proceedings in the House of Commons a motion was made for an Address to the King, asking that a new Parliament should be convoked before any final arrangement for Union was adopted. The leaders of the Opposition gave it their support, stating that while they did so they were sensible of the influence of the Crown in the choice of members. It was rejected by a majority of 46, the votes for the motion being 150, those against it, 104. Ultimately articles of Union between the two countries were agreed upon by their Parliaments, and were embodied in Bills, which became law. The

Motion to  
address the  
King to  
dissolve  
Parlia-  
ment.

relative strength of the Government and of the Opposition in the Irish House of Lords will appear from a division upon the third reading of the Bill for Union, when 41 voted for it, and 14 against it. In the British House of Commons the Opposition could obtain but 26 votes when the resolutions passed by the Irish Parliament were proposed for adoption; and but 30 upon a motion to pray the king to suspend his Ministers' proceedings until the sentiments of the people of Ireland could be ascertained. The votes for the Government upon the first occasion were 208, and upon the second 236.

Act of  
Union.

The design of the present treatise not extending beyond the relations of the Legislatures affected by the Act of Union, only such of its provisions as relate to them require to be noticed. On and after the 1st of January, 1801, the kingdoms of Great Britain and Ireland were united into one kingdom by the name of the 'United Kingdom of Great Britain and Ireland': and the said United Kingdom was to be thenceforward represented in one and the same Parliament, to be styled 'the Parliament of the United Kingdom of Great Britain and Ireland.' Ireland was to be represented in this United Parliament—in the House of Lords by four spiritual lords, sitting in rotation, and by twenty-eight temporal lords, elected for life from the Peers of Ireland; and in the House of Commons by one hundred Members (two for each of the thirty-two counties,

two for each of the cities of Dublin and Cork, one for the University of Trinity College,\* and one for each of the thirty-one most considerable cities, towns, and boroughs).†

Accompanying the Act of Union was another Act, which provided compensation in the case of disfranchised boroughs. They were eighty-four in number; and £7500 was paid in respect of every seat. Thus, as there were two Members for each borough, the total amount expended for this purpose came to £1,260,000.

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\* It is singular that the University is called the 'University of Trinity College,' and not the University of Dublin.

† See further as to the Act of Union, Note HH of Appendix.

## CHAPTER XVIII.

## DEBATES UPON THE UNION IN THE IRISH PARLIAMENT.

[SESSION OF 1800.]

Debates in  
Irish Par-  
liament,  
1800.

THE debates in the Irish Parliament upon the question of Union, during the session of 1800, were conducted with great ability. To the former speakers on the side of the Opposition were then added Grattan, who was returned for the borough of Wicklow upon the day when Parliament met, and Saurin, whose profound legal learning placed him at the head of the Bar. On the side of the Government, the most important addition to former arguments came from Lord Clare, who, early in the session, spoke in the House of Lords in favour of the policy of Union.

Opposi-  
tion meet  
the Go-  
vernment  
by a direct  
negative.

The Opposition met the proposals of the Government by a direct negative. There was no attempt made to substitute an intermediate scheme. And this is the more remarkable, as one of the most able pamphlets against the Union had admitted that, if an Irish Parliament were allowed to remain, its continuance might well be accompanied by a definitive treaty as to trade and commerce, by a law imposing upon it an

obligation to ratify the policy of Great Britain in case of a war, and by requiring for legislation in reference to religion the concurrence of the British Parliament.\*

In 1782, the Duke of Portland and Lord Shelburne would have desired some plan of a restricted legislative jurisdiction for Ireland, but the opposition it would have received in the Irish Parliament deterred them from bringing any such forward.† What had since that time occurred tended not to abate but to increase the motives for resisting a limited system. A scheme of this character would, in 1782, have been merely the alteration of one form of subordination into another: now it would supersede and take the place of a Legislature of supreme authority, entitled to deal with every subject, whether external or internal, that could concern the interests of Ireland. To submit to restrictions was regarded as an explicit confession of inferiority. ‘Are we’—exclaimed Sheridan, giving utterance to sentiments prevalent in Ireland—‘are we to be told that Union will not wholly dissolve the Legislature of Ireland; that independence will survive Union,

Unpopularity of any scheme for a local limited Parliament.

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\* This pamphlet was by Richard Jebb, who, after the Union, was a judge of the Irish Court of King’s Bench. It was a reply to a pamphlet entitled, ‘Arguments For and Against an Union,’ which was written by Edward Cooke, the Under-Secretary. (See Note II of Appendix.)

† See page 121 *supra*.



though in a modified state; that Parliament will be left to judge of the local affairs of Ireland? Really, sir, this seems almost too much for men's feelings—a Parliament! a sort of national Vestry for the parish of Ireland, sitting in a kind of mock legislative capacity, after being ignobly degraded from the rank of representatives of an independent people, and deprived of the functions of an inquisitorial power, exercising and enjoying the greatest authority that any Parliament can possess.\*

Examples  
of limited  
legisla-  
tures.

A constitution which confined a local Parliament to making laws for its own people, such laws to be operative only within the boundaries of the soil which the people occupied and in respect of their internal rights and interests, while all their external relations were regulated by a different Legislature, was not without examples at this time. Such systems existed in the Isle of Man, Guernsey, and Jersey. But that they did so exist was not calculated to recommend them to the Irish Parliament. There were few notions more certain to provoke resentment than to class Ireland as an additional Channel island, and offer it only such privileges as were suitable to a community whose proximity and relative unimportance entitled it

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\* *Collected Speeches of Sheridan*, vol. iii., p. 279. Sheridan, during his opposition to the Union, spoke principally from an Irish point of view. See p. 153 *supra*, note.

to no higher position than that of an appendage to England.\*

Nor were the objections to a Parliament for Ireland with limited jurisdiction only such as had their origin in Irish national sentiment. From an English point of view others disclosed themselves. These reached to the very existence of a Parliament in Ireland. They saw in it a rival, almost certain to be successful, raised up to contest supremacy with Great Britain. The local Legislature would be visibly present to the Irish people, its members constantly coming in contact with them, and its measures consulting only for their welfare, while England and the British Parliament would appear to them occupied wholly with affairs which but feebly and circuitously could affect their interests. Attention, respect, attachment, would be concentrated on what was near and of immediate influence, not on what was remote, and necessarily of feeble attractive power.

The only alternative offered to the Irish Parliament being, therefore, Union or retention of the existing legislative system, discussion during its debates turned altogether upon these subjects. Was the Parliament of Ireland competent to unite itself with the Parliament of Great Britain? If

Objections  
to limited  
Parliament  
from an  
English  
point of  
view.

Incompe-  
tency of  
Irish Par-  
liament to  
enact  
Union al-  
leged.

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\* Grattan, upon one occasion, speaking of the Parliament of the Isle of Man, described it as 'free from the influence of opinion, free from the influence of duty, directed by prejudices, and unincumbered with knowledge.'—*Speeches*, p. 247.

it was competent, then, was it advisable, in the interests of the country, that it should do so? The first question (raised originally by Sheridan) was now examined with acuteness by the legal members of the House of Commons. On the side of the Opposition it was contended that the Union of one Legislature with another was equivalent to a merger of the weaker of the united Legislatures; that merger differed in nothing from destruction; that self-destruction was inconsistent with the object of its original institution. Parliament, it was said, was elected to make laws, not legislators; it occupied towards the people, or at least towards its constituents, a fiduciary position; legislative power was a sacred deposit entrusted to its care; and a deposit committed to a trustee he was bound to preserve in the same condition as it was when he received it.

Reasons in  
answer.

Objections of this character, it was obvious, were equally applicable to the Union of Scotland with Great Britain. Whatever was the legislative capacity of the Scottish Parliament, the same, since 1782, was the legislative capacity of the Parliament of Ireland. An authoritative precedent had therefore, it was argued, finally and for ever overruled the objections now suggested. Nearly a century had elapsed since the decision, and never during all that period was its correctness impugned by either statesman or jurist: on the contrary, every expression of legal opinion had been in its favour. Nor, it

was said, could the principles on which it rested be justly controverted. Nations, all would admit, could unite; if they could, there must be in each some authority to contract for Union, and to negotiate and determine the terms and conditions of Union; and among these to fix where in future was to reside the right to legislate for the composite realm about to be created. And what authority so proper to fulfil these functions as that which in each made laws for the community—in an absolute monarchy, the Sovereign; in a limited monarchy, the Sovereign and Parliament? Union was but a treaty between two independent kingdoms. Moreover, according to the constitutional principles accepted by the highest English legal authorities, the legislative jurisdiction of Parliament was of a high and transcendent nature. It had been exercised to change the ruling dynasty; to remodel the succession to the Crown; to supersede the establishment of one form of religion, and declare that another, widely different, should be professed by the nation. Parliament had even altered its own constitution, abridging the period for which, when returned, it was to endure, annulling old and creating new conditions in respect of the right to vote for representatives in the House of Commons. Parliament could do whatever was not expressly forbidden by the Constitution.

Those who argued against the competence of the Irish Parliament did not clearly explain to

what other authority recourse could be had in order to effect an Union. Had the Irish electoral constituency more power than Parliament? Did not objections lie to its jurisdiction similar to those urged against that of Parliament? It was but a portion, and a not large portion, of the people. Was it, any more than Parliament, constituted to give away the rights of the whole?—to transform Ireland from an independent kingdom into thirty-two additional counties of Great Britain? Either (it was not without reason contended) Parliament, as a supreme absolute authority, had the right, or it lay in the whole mass of the people—a sort of sovereignty in abeyance—for the exercise of which the Constitution had made no provision.\*

If Parlia-  
ment had  
not, had  
the elec-  
tors power  
to unite?

Should  
there have  
been a dis-  
solution?

It is, however, obvious that to establish the legal power of the Irish Parliament does not exhaust the subject we are now examining. There remains the question: Ought the power to have been exercised without a dissolution of Parliament, so as to enable the electors to express an opinion upon the proposed enactment? Neither in the case of the Irish Union, nor of any other great political measure, can this question be answered upon principles of abstract right. The reply to it must depend upon considerations of expediency; upon the circumstances of each particular case, and the

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\* See further as to the competency of the Irish Parliament, Note KK of Appendix.

conclusions proper to be drawn from them. To lay down that the House of Commons ought not to adopt any measure new in its nature and of importance without appealing to the electoral body, would reduce its position to that of a congress of agents for special interests, who must continually ask the direction of their principals. But on the present occasion there was more than novelty and importance; there was also a great change of opinion between 1799 and 1800. The members of Parliament who in the former year opposed and in the latter voted for Union might have been selected because of their first opinions. Of these topics, had the constitution of the Irish House of Commons been such as to render it a representative of the people, it would have been difficult to evade the force; but as it was the House most imperfectly reflected public opinion. The number of open seats did not amount to half the number of close seats.\* There is no reason to think that upon a dissolution the balance of power would have been altered; for in the boroughs and small constituencies Ministers had gained over a sufficient number of proprietors and persons of influence to turn the scale in favour of their views, or if not, what was deficient could have been procured.

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\* The open seats do not seem to have exceeded ninety.  
(See Note LL of Appendix.)

## CHAPTER XIX.

CONSIDERATION OF THE DEBATES UPON THE UNION  
IN THE IRISH PARLIAMENT CONTINUED.

[SESSION OF 1800.]

Lord Clare  
and Grattan.

TO trace fully the course of the debates upon the second of the questions for the Irish Parliament—the expediency or in expediency of Union—would demand more space than is consistent with the limits designed for this treatise. The eminence, however, of two speakers—Lord Clare and Grattan—and in the case of the former also the peculiar and distinctive character of his reasoning, demand that some of their arguments should receive at least a brief notice.

Speech of  
Lord  
Clare,  
Feb. 10,  
1800.

Lord Clare, having stated that he had long been of opinion that nothing but Union could save Ireland or uphold the stability of the British Empire, and that he had in vain for seven years pressed his opinions upon the British Ministers,\* proceeded to pass in review the most important events of Irish history. He pointed out that the original English settlements were colonial in character, and that for

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\* This part of the speech has been already cited. (See page 143, *supra*.)

several successive reigns they were left to thrive by their own strength and resources, receiving no other reinforcements than the occasional arrival of new adventurers. Until the reign of Elizabeth there was no reduction of the island; nor was the reduction completed before her death, it being only then that Tyrone submitted. The era of James I. was, he said, to be regarded as the era of connection between the sister islands. But at that time religious differences operated. These had taken the place of the former divisions of the people, and the King was driven to the necessity either of treating the old inhabitants as a conquered people, and of governing their country as an English province, or of fortifying the Protestant colony by investing them exclusively with the artificial power of a separate government, which on every principle of self-interest and self-preservation they would be bound to administer in concert with England. Having increased the importance of the local Parliament, James determined to ensure a majority in the House of Commons, well-affected to the English Crown; and accordingly he incorporated towns occupied by the settlers who had come over during the Plantation of Ulster, giving them the franchise of sending representatives to Parliament. The Plantation was introduced upon land then forfeited, the native proprietors being expelled, and adventurers from England and Scotland substituted.



Under the Commonwealth there occurred another confiscation of land—the consequence of the rebellion of 1641, and of the victories of Cromwell's soldiers. Then a second large introduction of settlers into the country ensued. At a later date the lands of James the Second's adherents, when he had been defeated, were sold under the authority of an English Act of Parliament. The result of these confiscations was that power and most of the property of the country became vested in colonists, who established themselves after the termination of three distinct rebellions. Their descendants now owned the lands which had been so acquired; but they were hemmed in on every side by the old inhabitants of the island, whom he described as brooding over their discontents in sullen indignation. What, then, he asked, was the security of the English settlers for their physical existence at the Revolution? and what was the security of their descendants at that day? Solely the powerful and commanding protection of Great Britain.

Lord  
Clare's  
speech  
continued.

Having at some length urged this line of observation in order to dispose the Peers whom he was addressing, and others, either proprietors of or having interests in land in Ireland, to desire the most close connection with Great Britain, he proceeded to consider the existing connection. He observed that soon after the Revolution it was seen that there were seeds

of disunion in the relations between Ireland and England. Both Houses of the Irish Parliament in Anne's reign acted upon this supposition, and suggested Union. The Queen's Ministers would not, he said, listen to the proposition; and in finding a substitute for it there was a race of impolicy between the two countries. The Parliament of England considered the permanent debility of Ireland as the best security for its connection with the British Crown, and the Irish Parliament rested the security of the colony upon maintaining a perpetual and impassable barrier against the ancient inhabitants of the country.

The various proceedings and transactions, <sup>Speech continued.</sup> which resulted in the Constitution of 1782, were then examined. The appeals to the Volunteers by the angry politicians of that day were, Lord Clare asserted, dangerous and ill-judged in the extreme. They established a precedent for rebellion, which had been afterwards followed up with success. The concession of a free trade was, he pointed out, followed by the demand for a free Constitution: and the English colony was taught in an evil hour to separate itself from the English nation. What occurred in 1782 was now represented to be a final adjustment of all political claims and controversies between Great Britain and Ireland; but no man, he said, could believe that Ministers at that time would have rested the

connection between Ireland and Great Britain upon such a basis. This, however, no longer remained a question, he alleged, of inference or opinion, for the Duke of Portland's official correspondence, which had been laid on the table of the British House of Commons in the previous session, cleared up the point.\* And even if, in contradiction to such proof, it were to be admitted that the adjustment of that time had been then considered final, was there a principle of sound policy or common sense to preclude a revision of it, when practice and experience proved that it had sowed the seeds of contention and rebellion?

Speech  
continued.

In the course of his argument, Lord Clare examined the conduct of the Opposition since 1782: the dissensions connected with the Commercial Propositions and the Regency; the growth and final outbreak of a rebellious spirit among the people. Seditious and treasonable conspiracies had brought the country to the verge of ruin; and these were, he argued, the natural offspring of the adjustment of 1782. The result, he asserted, was that as regards internal peace, finance, and general condition, the situation of the country was calamitous.

Conclusion  
of Lord  
Clare's  
Speech.

These reasons all, he argued, combined to recommend that some more intimate connection between the two countries than that which was

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\* See page 121, *supra*.

then established, some improved parliamentary system, should be constituted. Such would be Union and an Imperial Parliament. These measures would, he predicted, extinguish the spirit of faction with all its attendant evils. When this should be accomplished the resources of Ireland would be developed, British capital and British industry would be introduced, and the people, reclaimed and improved, would gradually become qualified for the enjoyment of rational liberty. In recommending Union, he denied that he did not feel, as a true Irishman, for the dignity and independence of his country. What he advocated would elevate her to her proper station in the rank of civilized nations. It would advance her from the degraded post of a mercenary province to the proud position of an integral and governing member of the greatest Empire in the world.

Grattan delivered four speeches against the Union during the debates in 1800. The first is the most important. In this, like Sheridan and Foster, he insisted upon the finality of the adjustment of 1782. Even if it could be shown to be otherwise, and that there were to be further measures, Union was not one of them. The Minister now at the head of affairs had been in power nearly the whole period since 1782; he never ventured until the present time to name Union—never, until he had reduced the country

Grattan's  
Speech,  
Jan. 15,  
1800.

by his measures to religious divisions, to the condition of a conquest such as she was in when the Parliament of England, at the close of the last century, took away her trade, and in the present took away her Constitution. It was said (he exclaimed) that we 'abolished one Constitution, but forgot to form another.' What! was it meant that we should have taken away the usurped and tyrannical power of the Legislature of England in order to restore the same usurped and tyrannical powers to that very Legislature? And in what branches? Commerce, &c.—the very branches in which Ireland had been by that Legislature most injured. It was not necessary to have Union in order to prevent the commercial concessions being revoked. Ireland possessed ample resources to incline the councils of England to remember and observe her compacts: thus its Parliament could, he said, so regulate intercourse with other countries for colonial produce, so regulate the right to an East Indian trade, and so adjust the channel trade, as to secure a preference in the English market for Irish linens, and a direct intercourse with the British plantations.

Speech  
continued.

No objections to the existing Constitution were more relied upon than those founded on the actual disagreements of the British and Irish Legislatures respecting the Commercial Propositions and the Regency. Grattan met them by defending the action of the Irish Parliament in

both instances. Disagreement on the subject of war had never occurred; if it did, Ireland might happen to be in the right. Was England so infallible as never to err?

But suppose objections—was the Minister's measure a remedy? He threw down without principle; he constructed without foundation. Was that an Union which excluded the Catholics? No; it was a merger of the Irish Parliament without union of the people. Nor did the Minister only exclude the Catholics: he destroyed the best chance of their admission—their relative consequence; for Union, as it would destroy the relative importance of Ireland, so would it destroy the relative proportion of the Catholic inhabitants.

Of what, then, Grattan asked, would the Imperial Parliament consist?—of what would be its elements? Irish absentees, who have forsaken their country, and a British Parliament that took away the Constitution. Would such a Parliament have no prejudices against Ireland? In order to estimate the new Legislature, compare the British Parliament as it has been, and as it has acted towards Ireland, with the existing Legislature of Ireland. During the last twenty years the blessings procured by the Parliament of Ireland were, he said, greater than all afforded by British Parliaments for a century; greater than all the blessings procured for their own country. The Legislature of England lost an

Empire, the Legislature of Ireland recovered a Constitution.

Speech  
continued.

He then commented upon the supposed advantages to be gained from Union by the Established Church, by the Catholics, by the mercantile body—all which he regarded as offered to induce the Constitution to be betrayed. Advantage to manufactures he thought altogether visionary. The English capitalist was to come over: was to settle his family in the midst of those Irish Catholics whom he did not think it safe to admit to Parliament! So, too, the condition of the people was to be improved by creating a necessity for absenteeism, and withdrawing the influence of a resident gentry: the peasantry were to lose the presence of those whose presence was necessary as well for their succour as their improvement, that they might not perish for want of medicine, of cordial, of cure, which they can only find in the administration of the landlord, who, he added, civilizes them, and regulates them in the capacity of a magistrate, while he husbands and covers them in that of a protector, improving not only them but himself, by the exercise of his virtues, as well as the dispensation of his property.

Conclusion  
of  
speech.

The Minister, he concluded, proposes to buy what cannot be sold—Liberty. For it he has nothing to give. Everything of value you possess was obtained under a free Constitution: . . .

Your exports since your emancipation and under that parliamentary Constitution, and in a great measure by that parliamentary Constitution, have nearly doubled; commercially it has worked well. Your concord with England since the emancipation, as far as it relates to Parliament, on the subject of war, has been not only approved, but has been productive: imperially, therefore, it has worked well. The Minister proposes to you to substitute the British Parliament in your place; to destroy the body that restored your liberties, and restore the body which destroyed them. Against such a proposition, were I expiring on the floor, I should beg to utter my last breath, and to record my dying testimony.

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## CHAPTER XX.

## RETROSPECT.

Retro-  
spect.

THE limit designed for this treatise has been now reached, and it only remains to sum up the results which have been ascertained, and to note some matters which, if introduced in the preceding chapters, would have unduly interrupted the progress of the narrative.

pp. 1-11.\* We have seen that, probably before, and certainly from the time of, King John, legislative assemblies, under the name at first of Councils and afterwards of Parliaments, were convened by the Kings of England in Ireland; that originally all who attended them were personally summoned; that in the reign of Edward the First counties were for the first time empowered to send representatives to these assemblies; that a similar privilege was soon after extended to some cities and towns; that the number of counties, cities, and towns, thus privileged, increased along with and in proportion to the extension of English rule; that originally all members of these

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\* The references in the side-notes in this chapter are to the preceding pages and to the Appendix.

assemblies, whether summoned or elected, met and deliberated together; that at a later date they are found divided into two Houses, one of which assumed the form of a House of Peers, composed of Lords Spiritual and Temporal, and the other of a House of Commons, composed of the representatives of such counties, cities, and towns, as were from time to time entitled to parliamentary representation.

While, however, the principle of representative government was thus early acknowledged, and <sup>pp. 7, 8; Appendix D, E, F.</sup> thus constantly acted upon, its development was nevertheless, in some respects, very slow and imperfect. Until the reign of Henry VIII. the natives were practically excluded from the Councils and Parliaments; and until the reign of Elizabeth two great Provinces—Ulster and Connaught—possessed and inhabited by them, not having been reduced into shires, had never enjoyed more than occasional representation, and then only to the extent in the case of the former of two, and in the case of the latter of four members.

→ The Parliament of James I. (called in 1613) <sup>Parliament of James I.</sup> differed from all its predecessors. One hundred more members were returned to its House of Commons than had been to the last House of Commons of Queen Elizabeth. No qualification of race or religion was required from either the electors or elected; and persons of English, Scotch, and Irish descent, and of such

*legislative system*

denominations of religion as were then recognised among the people, were substantially represented.\*

Parliament  
of James I.

But it was not merely in these respects that this Parliament was distinguished from its predecessors; it equally differed in the spirit which animated it. All previous legislation had regarded the natives as the King's enemies, and aimed at drawing a line of separation between them and the colonists. When the Parliament met, statutes (of which the most important was the statute of Kilkenny, passed in the reign of Edward III., and the last in date an Act of Henry VIII.) framed to accomplish this object were still in force. Under their provisions intermarriage, fostering, gossiping with the Irish, rendered any of the English race subject to the penalties of high treason; to adopt Irish customs, to imitate their usages and manners, even in such trifling matters as having long hair, not shaving the upper lip, wearing linen dyed with saffron, were made offences.† Parliament at once repealed this whole code, and introduced in the Act passed for the purpose a declaration—more important

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\* The English party numbered 125, the Recusants 101. (See p. 12, and compare with Perrot's Parliament, App. G.)

† 28 Henry VIII., chap. 15. The statute of Kilkenny is not in the printed collection of statutes. A very perfect edition of it has been published by the Irish Archæological Society. Other statutes, also relating to the natives, are,

even than the repeal it effected—that the cause of these laws did then cease, since the inhabitants of the kingdom, without distinction, were taken into his Majesty's gracious protection; and that there were no better means to settle peace than to allow them to commerce and match together, that so they might grow into one nation, and former differences be forgotten.\*

When the Irish Parliament announced the principle expressed in this declaration, when it recognised the right of all the inhabitants of the island to be treated as one people, it placed itself in a position where it might not unfairly claim to be the Legislature of the nation. Without some such announcement, notwithstanding its increased number, and the improved character of its representation, it could not justly be regarded as more than the Legislature of a colony.

The constitution of the Irish Parliament at this time was apparently an exact counterpart of that of the English Parliament. It had a House of Lords and a House of Commons; and the forms and procedure of these Houses were modelled upon the forms and procedure of similar institutions previously established in England. In both

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5 Edward IV., chap. 3; 25 Henry VI., chap. 4; 28 Henry VI., chap. 1; 10 Henry VII., chap. 8. Ware says of fostering and gossiped:—'*Consuetudines dictæ gossiped sive compaternitas, et fostering sive liberorum educatio a nutritiis, per temporum corruptelam, multorum malorum erant fontes.*' (*Antiq.* cap. 8.)

\* 13 James I., chap. 5.

instances nothing that could affect the well-being of the people, whose interests were to be consulted for, was expressly excluded from the jurisdiction to be exercised. But in reality the resemblance between the two Parliaments was confined to external appearance. Their capacity of action was very different. The English was wholly free, without superior, and not liable to interference from any other Legislature. The Irish was admittedly subject to the restraints imposed by Poynings' law, and was by the provisions of that law obliged, before it could pass any valid enactment, to obtain the approval of the Privy Council of Ireland and of the Privy Council of England. It was also checked in its action, by the knowledge that the highest legal authority in England had affirmed the right of the English Parliament to legislate for Ireland, and that it was thus exposed to the danger of having its policy interfered with by another authority, which claimed concurrent or, it might be, paramount jurisdiction.\*

pp. 25-27. When the dignity and importance of the Irish Parliament had increased, as they did under James I., limitations upon the exercise of its jurisdiction were certain, sooner or later, to

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\* The judgment in *Calvin's Case*, which laid down the right of the English Parliament to make laws for Ireland, was pronounced after James's accession to the throne of England, and a few years before the Parliament of 1613 met. (See page 23, *supra*.)

excite dissatisfaction. Some time, however, elapsed before discontent was openly manifested. From 1615 to 1634, no Parliament was convened; and from 1634 to 1640 Parliament was awed into silence by Strafford. When with his removal from the Viceroyalty freedom of debate and procedure came, sentiments and demands previously restrained from utterance found expression. The House of Commons at once proceeded to assert the rights which, it alleged, either rightfully belonged, or ought to be conceded, to the Irish Parliament. It resolved that all statutable law to bind the people of Ireland should proceed from the authority of their own Legislature.

This resolution was not, however, followed by any practical consequences. The rebellion of 1641, and the subsequent civil war, wholly absorbed the attention of all interested in political affairs. Under the Commonwealth no legislative assembly met in Ireland; and an external government arbitrarily reconstructed the entire social system. After events of such magnitude the comparatively unimportant efforts of a local Legislature to elevate its position ceased to attract observation, and gradually faded from men's minds. There is no appearance of their having been even remembered at the Restoration. Under Charles the Second the English Parliament assumed the authority, which the Irish Parliament in the time of his Father had refused

to acknowledge, and proceeded in express terms to legislate for Ireland. Under William and Anne the same course was persisted in; and under the First George the Parliament of Great Britain, which had then taken the place of the Parliament of England, in order to place beyond doubt the extent of jurisdiction which it claimed, declared in distinct language that the King's Majesty, by and with the advice and consent of the Lords and Commons of Great Britain in Parliament, had, and of right ought to have, full power and authority to make laws of sufficient force to bind the kingdom and people of Ireland.

Legislative  
system  
after the  
Restora-  
tion.

From the Restoration, therefore, the legislative system operative in Ireland was a divided empire. Both the Parliament of Ireland and the Parliament of England, or (when it ceased to exist) the Parliament of Great Britain, asserted and exercised a right to make laws for the island and its people. In theory there was no boundary-line to define their respective spheres of jurisdiction: in practice there was. Poynings' law enabled the English Government, through the agency of the English or British Privy Council, to prevent the Parliament of Ireland from legislating upon any subject which it desired to reserve for the Parliament of England or Great Britain.\* As a general rule, whatever was of such a nature that the decision in re-

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\* See pages 13-15, 90, *supra*.

ference to it must be a matter of indifference to the English people was left with the Irish Parliament; whatever might be so dealt with as to injure English interests was withdrawn from it. Under the former class came most of the internal affairs of Ireland—under the latter its trade with foreign nations.

These arrangements averted conflict between the two Parliaments; in other respects they worked ill. Ireland sent no members to the English Parliament: its interests were there unrepresented. English and Scotch interests were alone considered; and whenever they appeared to be adverse to Irish, the latter were no more regarded than the interests of one of the continental kingdoms. In order to serve English agriculture, the importation of Irish cattle was prohibited; in order to serve English commerce, no Irish ship could enter a colonial port, no colonial ship enter an Irish port; in order to serve English manufactures, no wool or woollen goods could be exported from Ireland except to England.\* It is difficult, if not impossible, to find an English statute relating to Ireland of a date before 1780—unless it be the Act of William and Mary, which annulled the proceedings of James the Second's Parliament—for which the motive of promoting Irish, as distinguished from English interests, can be suggested.

Its effect  
on British  
legislation  
for Ireland.

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\* See pages 33, 34, 42, *supra*, and Notes L and N of Appendix.



Its effect  
on Irish  
legislation.

Down to the end of George the Second's reign, the Irish Parliament was concerned with little beside internal affairs. All its statutes then in force relate to subjects of this nature. Restriction upon the range will injuriously affect the character of legislation. In a great empire, and, therefore, in its Parliament, if it be so constituted as to be representative, the grandeur and multiplicity of interests expand and liberalize policy; it is the consequence not of one single impulse, but of a number of impulses reciprocally acting upon each other; and their diversity ensures that the result shall be marked by moderation. Society, in such cases, becomes subdivided into a number of differing sections of opinion, and, without a combination, difficult to effect among them, measures of injustice and oppression cannot be enacted. But of such variety of influences a narrow area and confined scope of action deprived the Irish Parliament. Its views were contracted to the measure of its condition. Never coming in contact with anything higher or nobler, it reflected only the passions and prejudices with which it was encircled. At their bidding it framed its legislation, and consigned the weaker, although much the larger, portion of the people to a state of hopeless inferiority.\*

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\* In one of his speeches Grattan describes Ireland, before 1782, as 'a squabbling, fretful sectary, perplexing her little wits, and firing her furious statutes with bigotry, sophistry,

At the accession of George III. to the throne, the consequences of the legislative system which was then operative in Ireland were distinctly apparent. The English Parliament had so regulated external affairs as to extinguish the trade and commerce of Ireland; the Irish Parliament had so ordered its internal affairs that the major part of the nation were subject to intolerable oppression. The country was, as might be expected, everywhere poor and depressed.

Out of these circumstances originated a movement which, having obtained success in some demands of inferior importance, directed its energies at first against the commercial legislation of the British Parliament, and then against the jurisdiction over Irish affairs which that Parliament assumed. Members of the House of Commons who would in any legislative assembly, however illustrious, have attained eminence, became its leaders. Under their guidance it made rapid progress, and won almost unanimous favour and sympathy from the people. As had before occurred when Swift evoked the latent patriotism of the country, Catholic and Protestant, native and colonist, joined together. Local feuds and animosities ceased or were silent. A determination to resist the supremacy claimed by the English Parliament, to achieve commercial

Its effect  
on the  
country.

Movement  
for com-  
mercial  
and  
legislative  
freedom,  
pp. 80, 92.

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disabilities, and death.' This state of affairs, he anticipates, would not survive the altered position of the Irish Parliament after 1782. (Speech, 16th April, 1782.)

and legislative freedom, absorbed into itself all other aims and impulses.

Growth  
of Parlia-  
ment.

A struggle of this character appeals to, and seldom fails to call forth, whatever capacity may be possessed by those engaged in it. The debates and discussions of the time rival in eloquence and thought those of the same period in the British Legislature. Parliament rose to an intellectual greatness, with which its position of imperfect power and inferior dignity was inconsistent. Expanding beyond the limits at that time prescribed for its action, it could no longer endure, or, it might be, even exist within, the restrictions that bound it.

Volun-  
teers,  
p. 94;  
App. R.

At this crisis the Volunteers came forward for the defence of the country. The discipline of this force did not withdraw them from the influence of popular sentiment and feeling. They were armed citizens, not soldiers. Self-constituted, organized, and maintained at their own expense, they were beyond the control of the British Government. Without the sanction of legislation for the purpose there does not seem to have been any authority entitled to interfere with them. But such legislation would have been refused by the Irish Parliament; and, if granted by the British, could not have been enforced. Subject to no external restraint, acting only under the impulse of their own sentiments, the Volunteers became the champions of the prevalent discontent.

In 1780 the Irish Parliament allied itself with the Volunteers. Acting in concert, both demanded from the British Parliament commercial freedom. The demand was conceded. Limitations which then fettered trade from Ireland with the colonies, with the continent of Europe, and with Great Britain, were annulled. In 1782 the same confederates demanded legislative independence. They were again successful. The exclusive right of the King, Lords, and Commons of Ireland to bind by their laws that kingdom and its people, as well in respect of external as internal affairs, was unequivocally acknowledged.\*

This admission placed the Parliament of Ireland in the same relation to its people as the Parliament of Great Britain was to the people of England and Scotland. The two Parliaments became, thenceforward, co-ordinate institutions. Another measure of equal importance followed, which provided that the control exercised over Irish legislation by the Privy Council of Ireland and the Privy Council of Great Britain should cease. In every particular, except one, the Legislatures of the two kingdoms were to have similar powers and similar procedure. The one exception was, that whereas a Bill passed by the Houses of Lords and Commons required in Great Britain only the Royal Assent to become an Act

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\* See page 118, *supra*, and Note S of Appendix.

of Parliament, there was needed in Ireland that it should also be transmitted to England, and be thence returned under the Great Seal of Britain.

When the legislation of this period is considered, it is to be kept in mind that it did not extend to the administrative or executive departments of government in Ireland. The Irish Ministers were, and continued to be, appointed and liable to removal by the British Ministers, and spoke and acted subject to their control and direction. An adverse vote—even a vote of censure—of the Irish House of Commons did not necessarily remove the former from office; while an adverse vote of the British House of Commons, if it led to the resignation of the British Ministers, was in most instances followed by the resignation of the Irish.

The increased power and jurisdiction conceded to the Irish Parliament in 1782 augmented its dignity and importance. It became in these respects not unworthy to be the Legislature of an independent kingdom. Its internal constitution was, however, and continued to be, in one important respect, imperfect. Its representative character remained unduly narrow. None but Protestants could sit in either the House of Lords or the House of Commons; and only Protestants could vote for members of the latter. Even as to Protestants the representation, owing to the excessive number of boroughs in the nomi-

nation or power of a few persons, was quite inadequate.

Excuses for the permission of such defects and anomalies, which might not unfairly be alleged on behalf of Parliament so long as it was weak and compassed with danger, ceased to be applicable when it had attained greatness and security. A demand for amendment arose, but was accompanied with much diversity of opinion as to the nature and extent of the amendment to be made: one party advocating emancipation of the Catholics along with the disfranchisement of the close boroughs, another disfranchisement without emancipation, and a third emancipation without disfranchisement. In the end, after ten years of debate, Catholics were admitted to vote at elections of members of the House of Commons.

The admission of Catholics to the electoral franchise was an alteration, if not in the Constitution of 1782, certainly in its relations to the people. It was the only alteration introduced into either, while the Constitution continued in force. When it was made, events were already conducting English statesmen to a policy, not of reform, but of abolition of the Constitution. These events were connected with the relations of the Irish Parliament to imperial interests.

When the Parliaments of two independent kingdoms co-exist within the same empire, it follows, as a necessary consequence, that a large

range of subjects must be submitted to both concurrently. Whatever concerns the general weal comes within this category: so also do internal arrangements, especially as to trade, between those whom they represent. On many of these matters the agreement of the Legislatures is essential to the well-being, if not the safety, of the State.

Under such circumstances it may, as a general rule, be laid down that the requisite agreement cannot be reckoned certain, unless there exists absolute harmony of sympathies and interests between the kingdoms, or such consciousness of comparative weakness on the part of one as may suppress any manifestation of its dissent. In the case of Ireland and Great Britain there were, in their position, circumstances, and history, causes for difference of sentiment and opinion; and Ireland was both physically and intellectually too great to accept passive submission. Actual disagreement, distinct and total, upon subjects of most grave importance ensued: further disagreement, calculated to impair the connection of the two kingdoms, and imperil the security of the realm, might, and it was feared would, occur. Foreign war and internal rebellion lay in wait to take advantage of the least appearance of weakness.

pp. 131,  
139.

These dangers arose from the independence of the Irish Parliament and the extent of its jurisdiction. They might be expected so long as

both independence and jurisdiction remained as they were. To hinder their recurrence either the independence or the jurisdiction must be abridged. But the difficulties in the way of the latter measure were insuperable. The policy of restriction had been tried, had been condemned, and, in 1782, had been finally renounced without a dissentient voice among statesmen. It could not be revived; and, if it were revived, experience, it was said, had shown that it could not be maintained. <sup>pp. 123, 126.</sup>

When restriction was rejected, the exigency <sup>Union.</sup> of the case led to the Act which now unites Ireland with Great Britain. Whatever objections, on other grounds, might be suggested, it could not be denied that it met the very needs which, it was said, required to have provision made for them. Incorporating in one the two kingdoms, it rendered, as far as human precaution could, their connection indissoluble: fusing together their separate Legislatures, it secured the unity of design resulting from a single paramount authority, representing the will, and consulting for the welfare of, the whole empire.

Thus the legislative systems operative in Ireland since the accession of James I., when first more enlarged ideas as to what should be their nature began to prevail, have successively (if we omit from consideration interruptions under the Commonwealth and James II.) assumed the forms



of a local Parliament subject to restrictions, of a local Parliament free from limitation, and of an Imperial Parliament in which Ireland is represented. The constitution of the first was framed upon the supposition that Ireland was inferior to, and dependent on, England, and that its subordination ought to be represented in the position of its Legislature; the constitution of the second admitted the equality in dignity of the two kingdoms, and sought to represent it by establishing the independence of their respective Legislatures; the constitution of the third also recognised the equality of the two kingdoms, and, regarding any relations between them except independence or Union as inconsistent with its recognition, created one United Kingdom with one supreme Legislature. The working and results of two of these constitutions, and the reasons which led to the adoption of the third, appear in the foregoing pages; the working and results of the third lie outside the scope of this treatise.

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## APPENDIX.



## APPENDIX.

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### NOTES AND ILLUSTRATIONS.

THE editions of the following works, to which references Appendix. both in the Treatise and Appendix are generally made, are :—

‘A Declaration setting forth how and by what means the Laws and Statutes of England came to be of force in Ireland,’ by Sir Richard Bolton . . . from Harris’s *Hibernica*. Part 2. Dublin, 1750.

‘Answer to the same,’ by Sergeant Mayart, Second Justice of Common Pleas, from Harris’s *Hibernica*.

‘The Case of Ireland’s being bound by Acts of Parliament in England stated,’ by William Molyneux of Dublin, Esq. (First Edition.) Dublin, 1698.

‘Essay on the Antiquity and Constitution of Parliaments in Ireland,’ by H. J. Monck-Mason, LL.D. . . . Dublin, 1820

‘A View of the Legal Institutions, Honorary Hereditary Offices and Feudal Baronies established in Ireland during the reign of Henry II., produced from Court Rolls, Inquisitions, and other original records,’ by William Lynch . . . London, 1830.

‘A Statute of the 40th year of King Edward III., enacted at a Parliament held at Kilkenny,’ with a translation and notes of James Hardiman, M.R.I.A., published by the Irish Archæological Society. Dublin, 1863.

‘History of Ireland, from the Invasion of Henry II.,’ by Thomas Leland, D.D., Senior Fellow of Trinity College. (Third Edition.) Dublin, 1774.

## Appendix.

## NOTE A.

Note A. The assembling of a Council at Lismore, under Henry II., is distinctly asserted by the historian Mathew Paris. No mention is made of it by Giraldus Cambrensis. Archbishop Ussher (*Parliaments of Ireland*) and Sir John Davis (*Discoverie*) follow Mathew Paris. Sir Richard Cox (*Anglicana Hibernia*) thinks that Mathew Paris has mistaken the place of meeting, and that the only Council was at Cashel. The cause of the mistake, it is suggested, may have been that the Bishop of Lismore, as Pope's Legate, presided at Cashel. Leland avoids deciding between these opposite views (vol. i., p. 76).

Why a Council should be held at Lismore, a place distant from the seat of government, has not been explained by those who allege that it was. In the instance of the other Council, which is reported to have been called by Henry, the reason for selecting Cashel was obvious: it was a sort of ecclesiastical capital for the South, and it was situate where chieftains had submitted to Henry (which was not the case at Armagh, the northern ecclesiastical capital). It is even more difficult to understand why, if the Council of Lismore was held, Giraldus Cambrensis did not mention a matter of such consequence.

On the other hand, Sir Richard Cox's theory is encountered by the fact that Giraldus, in his account of the Cashel Council, says nothing of the English laws as to civil affairs being there accepted.

The account of the Council of Lismore by Mathew Paris is in the following words: '... Rex antequam ab Hibernia rediret, apud Lismore concilium congregavit, ubi leges Angliæ gratanter receptæ et juratoriâ cautione prestitâ confirmatæ.'

Some evidence exists tending to show that after the Council of Lismore Henry II. held Councils. A statute described as of his reign is referred to by an Act of Richard II.; and a Parliament of Henry VI. (anno regni 32) asserted that

Parliaments were held from the Conquest by Henry Fitz-Appendix.  
 Empress to that time (Leland, vol. i., p. 83; vol. ii., p. 509). <sup>Note A.</sup>  
 It is also stated, in a petition to Richard II., that Parliaments  
 were held from the Conquest (Mason, p. 5). Lord Coke  
 says that Henry II. sent to Ireland a *modus tenendi Parlia-*  
*mentum* (4th Inst. f. 12); but Selden and Pryn consider that  
 the *modus* referred to was not as early as Henry II.

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NOTE B.

It is not clear whether the introduction, or (if already in- <sup>Note B.</sup>  
 troduced by Henry II.) the confirmation of English law in  
 Ireland by John and Henry III., was (as stated at page 4,  
*supra*) with the sanction of Councils in Ireland, or merely  
 founded upon the regal authority. Lord Coke thought that  
 under John it was by a Parliament or Council, and cites in  
 proof a recital in a patent of Henry III., which thus refers to  
 John and his enactment of English law for Ireland: '*Leges*  
*regni nostri Angliæ, quas dominus Johannes rex, de communi*  
*omnium de Hibernia consensu teneri statuit in terra illa*'—  
 treating '*de communi consensu*,' &c., as meaning 'by Act of  
 Parliament.' (Inst. iv. 349.)

Of Henry III. it is recorded that in his twelfth year,  
 '*mandavit justiciario suo Hiberniæ, ut convocatis archiepis-*  
*copis, episcopis, baronibus et militibus ibidem coram eis legi*  
*faciat cartam regis Johannis, quam legi fecit, et jurari a*  
*magnatibus Hiberniæ de legibus et consuetudinibus Angliæ*  
*observandis, et quod leges illas teneant et observent.*' (Cited  
 by Lord Coke, Inst. iv. f. 350.)

Henry III. had previously, on his accession, granted Magna  
 Charta to his Irish subjects (Leland, vol. i., pp. 200, 355);  
 and had also in the first year of his reign confirmed to them  
 the liberties granted by John. (See Molyneux, p. 47.)

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Appendix.

## NOTE C.

Note C. The account of Wogan's Parliament in the *Liber Niger*, preserved in Christ Church Cathedral, Dublin, is as follows : 'Justiciarius hic de communi consilio domini regis in hac terra, ad pacem firmitus stabiliendam ordinavit et statuit generale parliamentum hic ad hunc diem. Et mandatum fuit archiepiscopis, episcopis, abbatibus, et prioribus, quorum præsentia videtur ad hoc esse necessaria, necnon et comitibus, baronibus et aliis optimatibus terræ hujus, videlicet unicuique eorum pro se, quod essent hic ad hunc diem. Et nihilominus, præceptum fuit vice-comitibus Dubliniæ, Louethiæ, Kildariæ, Waterfordiæ, Katherlagh, Kilkenniæ, et Ultoniæ, quod unusquisque eorum pro se, videlicet vice-comes in pleno comitatu suo, et senescallus in plena curia sua libertatis suæ, per assensum comitatus sui seu libertatis, eligi faceret duos de probioribus et discretioribus militibus de singulis comitatibus et libertatibus, qui hic nunc interessent, plenam potestatem habentes, de tota communitate comitatus et libertatis ad faciendum,' &c. (Cited by Leland, vol. ii., p. 508.)

## NOTE D.

Note D. The importance of the first Irish Parliaments has been depreciated by Sir John Davis. He says: 'This extraordinary court was not established in Ireland by authority out of England for many years after, in the form it now is, till towards the declining of King Edward the Second's reign. For before that time the meetings and consultations of the great Lords, with some of the Commons, for appeasing of dissensions among themselves, although they be called Parliaments in the ancient annals, yet being without orderly summons or formal proceedings, are rather to be called Parlies than Parliaments.' (Leland, vol. ii., p. 492.)

This description cannot be considered just if applied to Wogan's Parliament of 1295 (page 5, *supra*), which in date

comes within its scope ; for as regards both the persons who attended and the subjects considered it was an important assembly. Nor with respect to the legislative assemblies before 1295 is it, if intended to apply to all without exception, a correct description ; some must have been at least in the matters transacted not unimportant. Ussher, speaking of what occurred both before and after 1295, says : ' All Parliaments that we read of in the chronicles are not to be accounted to have been of the same nature ; but a distinction may be observed therein of *petite* and *grande* Parliaments ; for the name is sometimes given to such meetings, as were Parlies, rather than Parliaments.' (*On Parliaments*.)

Appendix.  
Note D.

If the writs for Parliament subsequent to John be compared with the first of his reign (page 3, *supra*), the descriptions of the persons cited in some respects vary. Thus in one of Henry III., instead of Freeholders, are 'Freemen of the land of Ireland.' In another of the same King, after Barons, there are enumerated 'Justices and other Magnates.' And a statute of this king is said to be made *de consensu Magnatum et totius communitatis Hiberniæ*. Mayors and Bailiffs appear in the writs under Edward I.

The Parliament (mentioned at page 7, *supra*), to which Knights were summoned by name, was held, A.D. 1360. It consisted of ten Bishops, two Superiors of Abbeys, two Peers, and eight Knights—all summoned by name. Besides, for this Parliament writs directing elections of members were sent to the Mayors and Bailiffs of Dublin, Drogheda, Cork, Limerick, Waterford, Kilkenny, Rosse ; to the Sheriffs of the Counties of Dublin, Carlow, Louth, Kildare, Waterford, Limerick, Cork ; the Seneschals of the Liberties of Tipperary, Wexford, Meath, Kilkenny ; and the Sheriffs of the Counties of the Crosses of Tipperary, Wexford, Meath, and Kilkenny. (Lynch, chap. iii.)

With respect to Poynings' law, it is to be noted that when it was enacted, the law was desired by the Irish Parliament in order to circumscribe the power of the chief Governors. (Flood's Speech, 11th December, 1781, cited by Plowden, vol i., p. 552.)



## Appendix.

## NOTE E.

Note E. Official letters respecting the Parliament of 1541 (page 3, *supra*), and a list of those who attended, are preserved in the State Papers. This list describes the chieftains as follows:—*Procuratores Domini O'Brene; Willelmus de Burgo, seu nacionis capitaneus; Donat O'Brene; Carolus filius Arturi Kavanagh; Dominus O'Rayley; Kedagh O'More; Phelym Roo.* Opposite these names are written the words, *Isti nondum sunt de parlamento.* St. Leger, the Deputy, however, wrote to Henry VIII. that 'the great O'Rayley, with many other Irish Capytaines, attended.' He says the Upper House had three Earls, three Viscounts, sixteen Barons, two Archbishops, twelve Bishops; 'the Commons' House had divers knights and gentlemen of fair possessions.' The only Peer of Irish race seems to have been Lord Upper Ossory (Macgillapattrick, anglicised FitzPatrick). (*State Papers, Henry VIII.*, vol. iii., pp. 304-307.)

The Parliament met in June. In August other Irish chiefs—O'Connor, O'Dwyn, or Dun, and O'Donnell—are said to have acknowledged Henry's authority, and to have been followed by O'Carroll, O'Mulloy, Mac Mahon, Mageniss, O'Rourke, O'Flaherty, O'Melaghlin, Mac Carty, O'Sullivan, and others whose names are not recorded. (Plowden, vol. i., p. 61, n., and Ware's *Annals*, chap. xxxiii.)

## NOTE F.

Note F. The formation of the twelve counties, attributed to King John (see page 10, *supra*), is said to have been A.D. 1210. Westmeath was created under an Act of Henry VIII.; King's and Queen's Counties were formed under 3 & 4 P. & M., ch. 3; Longford, Clare, Galway, Sligo, Mayo, and Roscommon were also formed under 3 & 4 P. & M., ch. 3, A.D. 1565, in the reign of Queen Elizabeth, by Sir Henry Sidney, then

Lord Deputy; Roscommon is, however, mentioned in writs Appendix. of an earlier date. Leitrim was formed in 1583; and Ar-  
 magh, Monaghan, Tyrone, Derry, Donegal, Fermanagh, and  
 Cavan, in 1584. These counties were constituted by Sir John  
 Perrot, then Lord Deputy, under an Act, 11th of Elizabeth.  
 It was also by Perrot that Down and Antrim were finally  
 defined. Before Perrot there had been two small counties,  
 Ard and Down, which returned members to the first parlia-  
 ment of Elizabeth; these were by him united in one, viz.  
 Down. Wicklow was formed by Sir Arthur Chichester, under  
 James I.

Note F.

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NOTE G.

The record of Perrot's Parliament, A.D. 1585, is printed in Note G. the appendix to Hardiman's edition of the *Statute of Kilkenny* (page 139). It professes to give a list of the lordes spiritual and temporal, counties, cyties, and borough-townes, answerable to the Parlyament in this realme of Ireland: and souche as were summoned. The spiritual lords enumerated are four Archbishops, twenty-two Bishops; the temporal lords twenty-six, of whom were of Irish race Earl of Thomond (O'Brien), Earl of Clancare (M'Carthy), Lord Upper Ossory (FitzPatrick), and Lord Dungannon, who was also Earl of Tyrone (O'Neil). The counties required to return members were twenty-seven (two for each); the cities and boroughs thirty-six (two for each). The names of members returned are written opposite the counties and towns; some are obliterated. About eighteen seem to have been of Irish race.

In James's Parliament (1613) there were 106 more members of the House of Commons than in Perrot's. Of these about eighty came from the new boroughs created by James. At this time religious distinctions took the place of national. Without the new boroughs the Recusants would have had a majority. As it was, they numbered 101.

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## Appendix.

## NOTE H.

Note H. The *Statutum Hiberniæ* (mentioned in the note to page 17) is printed among the English statutes, but its close (teste meipso, &c.) is more like an ordinance. It declared the law of succession of co-heiresses. The Irish Chief Justice, Fitz Maurice, despatched four knights to the King in England, to ascertain the law and custom of England, whether they were to hold of and do homage to the eldest sister, and they brought back the ordinance that the sisters ought to hold of the chief lord, and not of the eldest sister. The *ordinatio pro statu Hiberniæ*, made at Nottingham (17 Edw. I.), which forbids the King's officers purchasing land in Ireland, Molyneux argues, must be an ordinance, because there is no record of a Parliament of Edward I. of the date. Whether it was an Act or ordinance, it never was in force. (See as to both statutes the observations of Molyneux, pp. 86-89.)

## NOTE I.

Note I. The instance of Irish representatives being summoned to England by Edward III. (mentioned at page 19, *supra*), was in 1376. Some were to be from the clergy. Representatives were, from respect to the King, sent; but in the case of Louth, the return was accompanied by a protest '... Una voce dixerunt quòd ipsi, juxta jura, privilegia, libertates, leges et consuetudines terræ Hiberniæ a tempore conquestus ejusdem usitatas, non tenentur eligere nec mittere aliquos de terrâ prædictâ ad parlamenta nec concilia in Angliâ tenenda ad tractandum consulendum et concordandum prout hoc breve requirit.' The same occurred in the case of Dublin; and the Archbishop of Armagh, for the clergy, similarly protested. (Leland, vol. i., pp. 327, and 378-383.)

In the reign of Edward I. and Edward II., also, there appear to have been Irish representatives summoned to

English Parliaments; for in a writ of the former King he speaks Appendix.  
of statuta per nos de assensu prelatorum comitum baronum et Note I.  
communitatis regni nostri Hiberniæ nuper apud Lincoln et  
quædam alia post modum apud Eborum facta: and a roll of  
Edward II. speaks of Richard de Burgo and other Irish nobles  
being summoned to Westminster—an excellent precedent  
(says Lord Coke, 4th Inst., 750) to be followed, whensoever  
any Act of Parliament shall be made in England concerning  
the state of Ireland. (See Mason's Treatise, pp. 40, 41;  
Molyneux's, pp. 80, 82; and Mayart.)

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NOTE K.

The Act of the Commonwealth of 12th August, 1652 Note K.  
(referred to at page 30, *supra*), seems to be based not on  
the general authority previously claimed by the Parliament  
of England over Ireland, but on the peculiar authority over  
not merely Ireland, but the whole empire, usurped by the  
Parliament after the death of Charles I. It regards the  
Commonwealth as in the position of a King in a monarchy  
upon the suppression of a rebellion, and treats all who op-  
posed its authority, whether native or colonist, Catholic or  
Protestant, whether they fought for Charles or for Irish in-  
dependence, as rebels, who had forfeited their lives and  
property. It even goes so far in its severity as to deal with  
persons who had stood neutral, as if they were delinquents,  
and proceeds to deprive them of a portion of their property,  
taking power in the case of Catholics to substitute for what-  
ever portion was not confiscated, lands in such other places  
as should be appointed. That on the Restoration those who  
obtained grants under this Act received favourable terms is,  
according to Lord Clare (Speech, Feb. 10, 1800), due not  
merely to the reasons stated at page 32, *supra*, but to Monk  
having made terms for them with Charles II. (The Act is  
not in the Statute-book; it will be found in Scobell's *Acts  
and Ordinances*.)

Appendix.

## NOTE L.

**Note L.** The first Navigation Act of Charles II. was passed in 1660. By its provisions Ireland was placed in the same category as England. The trade to the plantations, &c., in Asia, Africa, and America, was to be in ships belonging to 'the people of England, Ireland, the Dominion of Wales, or the town of Berwick-upon-Tweed' (12 Car. II., ch. 18). Scotland being omitted, the effect of this Act was to exclude Scottish ships from the right to trade which it protected. The second Navigation Act of Charles II. (15 Car. II., ch. 7) was passed in 1663. This Act omitted from the privilege of trading to the Colonies both Scotland and Ireland. In 1670 and 1696 the same policy was continued by other Acts, and after the last of these no goods could be imported directly from the Colonies to Ireland or Scotland. One of the provisions of this code was, that the master and three-fourths of the mariners of the ships trading to the Colonies should be English. From all such restrictions Scotland, by its union with England, was freed in 1707. Ireland continued subject to the Acts. A curious illustration of the operation of these laws has been mentioned by Mr. Huskisson. A ship from an English settlement in America, laden with colonial produce, was stranded on the coast of Ireland. The law did not allow the cargo to be landed in Ireland, or to be carried away in an Irish ship. To bring the cargo to England, another English ship had to be sent for it; and although the cargo might be wanted in the Irish market, it could not be delivered there without being unloaded in an English port, and again re-shipped to Ireland. (*Speeches of Huskisson*, vol. iii., p. 9.)

## NOTE M.

**Note M.** The Acts of James the Second's Parliament (A.D. 1689), which the English Act of 1690 professed to annul (page 36, *supra*), were thirty-five in number. The most important were

'An Act declaring that the Parliament of England cannot bind Ireland, and against writs of error and appeals into England'; the Act repealing the Acts of Settlement and the Attainder Act, which are mentioned at pages 36-38, *supra*; Acts relating to tithes and provisions for ministers in towns; 'An Act for liberty of conscience, and repealing such Acts or clauses in any Act of Parliament, which are inconsistent with the same.'

The Act for repealing the Act of Settlement, &c., reached back to 22nd October, 1641 (the day before the rebellion of that time broke into action). Any person who, or whose ancestor had been deprived of lands since that date, could recover them, and displace all the intervening titles. Compensation was to be made to purchasers for valuable consideration out of the forfeitures expected to follow from the war with William. The consideration of marriage did not entitle to compensation. The persons who came under the provision of the Attainder Act were Protestants; but its object seems to have been the same as that of the Repealing Act, viz. to deprive the existing owners of landed property of their possessions. Unless the persons enumerated by name in the Act—2461 in number—came by appointed days before prescribed tribunals (to which it was most unlikely they would trust themselves), they were to suffer the penalties of treason, among which was forfeiture of their lands.

The interference of the English Parliament seems to have been at the solicitation of the refugees in England—those whom Molyneux calls 'the banished laity.' (*Case of Ireland*, ed. 1719, pp. 63-65.) They came under the provisions of the Attainder Act, being included upon the ground that, although James had by proclamation called on his Irish subjects to assist him, they did not return to Ireland.

The Parliament of 1689 was composed almost altogether of Roman Catholics. There are said to have been only six Protestants in the House of Commons. The number of native race has been exaggerated. To judge by the names, a large proportion were of the Anglo-Irish families which did not conform to the religion of the State under Henry VIII.

Appendix. and Elizabeth. (See the names in Plowden, vol. i., p. 134).

Note M. Most of the members of the House of Commons are said either to have suffered, or to have been descended from or connected with those who had suffered, by the confiscations of the Commonwealth. James endeavoured to prevent the Act repealing the Act of Settlement, but in the end reluctantly yielded his assent. The Act for liberty of conscience was passed, in conformity with a recommendation contained in the speech delivered by James at the meeting of Parliament. The proceedings of this Parliament have been treated very fully by Macaulay (*History*, vol. iii., chap. 12); but with him should be compared the observations of Lecky. (*History of the Eighteenth Century*, vol. ii., chap. 6, pp. 184-194.)

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NOTE N.

Note N. The Act of the English Parliament (10 & 11 William III., ch. 10) enacts that no person shall directly or indirectly export, and ship off from Ireland into any foreign realms, or any place or places whatsoever, other than certain specified ports within the kingdom of England or dominion of Wales, any the wool, wool-fells, &c., cloth, serges, kerseys, &c., or any other drapery stuffs or woollen manufacture whatsoever, made-up or mixed with wool or wool-flocks, &c. From Ireland the export to the permitted ports in England was to be only from six ports which were specified.

The object of this Act was to make wool plenty and therefore cheap in England, by bringing all Irish wool there. For the same purpose all exportation of wool from England was prohibited. It is not surprising, therefore, that Adam Smith should have pronounced the woollen manufacturers of England to have been 'more successful than any other class of workmen, in persuading the Legislature that the prosperity of the nation depended upon the success and extension of their particular business.' (*Wealth of Nations*, book iv., ch. 8.)

## NOTE O.

Appendix.

Grattan's eloquence was admirably suited for the objects upon which he was engaged before 1782. It was eminently calculated to awaken enthusiasm. Even the characteristics which were attributed to it as defects, its point, antithesis, epigram, tended to aid its practical influence by fixing it in the memory of those whom he sought to move to action. The same may be said of the rhythmical arrangement of his sentences, which, as too artificial, has also been objected to. 'Cujus,' says Cicero of Demosthenes, 'non tam vibrarent fulmina illa, nisi numeris contorta ferrentur.'

In the British House of Commons, of which Grattan, after the Union, was a member, his reputation as an orator was not less than it had been in the Irish. His genius triumphed over the difficulties interposed by a tone of thought and sentiment and a standard of taste in the former assembly, entirely different from what he had experienced in the latter.

## NOTE P.

Grattan's speech of 16th April, 1782, concluded with the five propositions, which are set out at page 116, *supra*, exactly as they are there stated and numbered. He then said:— 'These are my terms. I will take nothing from the Crown.' This declaration he followed up by moving an Address to the King, which repeated what had been asserted in the Address of 22nd February, 1782 (see page 113, *supra*), with (in addition) an objection to the Mutiny Act as 'unlimited in duration, and defective in other instances.'

Before the speech some communication had taken place between Lord Charlemont and the Duke of Portland as to the resolutions to be proposed in the House of Commons, and modifications of what were then intended had been suggested by the latter, which were not agreed to by Lord



Appendix. Charlemont or Grattan. (See Hardy's *Life of Charlemont*, vol. ii., p. 20.) This was probably the reason why Grattan so explicitly defined his terms, and announced that he would not recede from them.

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NOTE Q.

Note Q. A tendency to depreciate Grattan may be observed in some of the writers who have recently discussed the proceedings of the Irish Parliament. The wisdom of the measures he supported is of course a fair subject for difference of opinion : but can there justly be other than the highest estimate of his intellectual and moral excellence? He entered Parliament in 1775, and although without fortune, rank, or any other influence than what his abilities and character might create, he had, before the close of 1782, obtained—for to his advocacy it was due—freedom for the commerce and parliament of Ireland. To achieve this success he had made use of no unworthy art or means whatever.

Nor in his subsequent career is there anything to detract from the estimate which, down to 1782, must be formed of his merits. He continued then to be, as he had been before, animated by patriotism, and guided in his conduct by an independent spirit, and a total absence of mean or interested motives.

On questions of general policy, Grattan belonged to the school of political thought which found favour in England with the Whig party; but with a leaning, after the French Revolution, to the opinions rather of Burke than of Fox. Thus, in 1794, he supported the policy of war with France; and about the same time he accompanied moderate proposals for reform of the Irish House of Commons with warnings against the democratical views encouraged by the example of France. 'We have not,' he observed, 'to seek for a constitution. . . . We have a monarchy, the best form of government for rational and durable liberty. . . . We have to advise and limit monarchy, and to exercise legislative power, a parlia-

ment, consisting of a senate, without which no country was ever temperately or serenely conducted; and a Commons, without which the people cannot be free.' (*Irish Debates*, vol. xiii., p. 14.) 'Transfer,' he said, 'the power of the State to those who have nothing in the country, they will afterwards transfer the property, and annex it once more to the power in their own persons. Give them your power, and they will give themselves your property.' (Speech, 4th March, 1794.)

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NOTE R.

The number of Volunteers in 1780 was estimated at 40,000 (see page 104, *supra*). In 1782 they had increased, according to the estimate of one of their most influential officers, to 60,000. The same authority describes them as 'self-raised, self-disciplined, self-clothed, and for the most part self-armed.' (See Dobbs' Speech in the Irish House of Commons, Feb. 5, 1800.)

Lord Buckingham has been blamed for not compelling the Volunteers to disband; but he thought that he could not effect this without legislation for the purpose. (See his Letter to Lord Weymouth, Dec. 12, 1778, printed in *Grattan's Life*, vol. i., p. 349.) And such legislation could not have been obtained from the Irish Parliament. The leading Peers and members of the House of Commons were at the head of the Volunteers; and the House of Commons, to mark its approval of their conduct, passed an express vote of thanks to them (October, 1780). The British Parliament might perhaps have been induced to enact whatever measures Ministers suggested. But would its enactment have been obeyed? At that very time, because the Mutiny Act was an English statute, its enforcement in Ireland was resisted. Members in the House of Commons (Lord Buckingham wrote) declared that 'they would not, as jurors, magistrates, or in any other capacity, suffer the British Mutiny law to be enforced, and (he continued) the whole tenor of the

**Appendix.** debate leaves no room to doubt that few inferior magistrates will dare, even if they were so disposed, as they are not, to act under that Mutiny law.' (Letter to Lord Hillsborough, May 8, 1780, cited by Lecky, vol. iv., p. 511.)

**Note R.**

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NOTE S.

**Note S.**

In the Resolution of the Irish House of Commons with reference to the effect of repealing the Act 6 Geo. I. (see page 118, *supra*), the word 'external' was introduced designedly. English statesmen, when discussing the rights of their own Parliament, and of the Parliament of Ireland, drew a distinction between 'external' and 'internal' affairs, and argued that legislation in respect of the former, as well for Ireland as for all other parts of the empire, belonged to the Parliament of Great Britain. But the Irish Parliament never admitted the propriety of this distinction; and therefore insisted that the repeal of the Act of George I. should be so interpreted as to prevent misunderstanding on the subject. Accordingly, at the end of the Session in which the Resolution had been passed, the House of Commons again reverted to the subject in an Address to the Lord Lieutenant, and, referring to what had taken place, claimed that 'the sole and exclusive right of legislation, external as well as internal, in the Irish Parliament had been firmly asserted on the part of Ireland, and unequivocally acknowledged on the part of Great Britain.'

To have offered the Irish Parliament exclusive jurisdiction only in respect of internal affairs would have been to leave matters very much as they were; for the actual legislation in connection with the internal affairs of Ireland, which was in force when the agitation commenced against the supremacy of the British Parliament, consisted almost altogether of statutes of the Irish Parliament; and where, as in the case of the forfeitures to William III., it did not, the exception had not caused discontent.

## NOTE T.

Appendix.

In some instances the English Government, having the power of returning or not returning the Bills from Ireland under the Great Seal of Britain, used this power to have them altered. (See *Edinburgh Review*, April, 1866, p. 579.) But it is not likely that this was either often or in relation to Bills in which the Irish Parliament was much interested; for Foster, in 1800, referring to this supposed restraint, described it as 'theoretic dependence, but practical independence.' (Speech, Feb. 17, 1800.) In truth, such a veto can be at most a weak check. The Minister by whom the power is to be exercised is the Minister of one country, the legislation with which he has to deal is the legislation of another. Unless the interests of the two countries come in collision, he has no motive for interfering; when they do he may not have the moral courage to act. In general he will be found to shrink from the responsibility of refusing what is presented to him as the demand of a people through their authorised representatives. He yields before the parliament of his own country can prevent him; and then what is done cannot be undone.

Of this the history of the Security Act in Scotland affords a striking illustration (see page 69, *supra*). Its provisions were (and deservedly) most unpopular in England. Instead of following the English limitations of the Crown, they asserted for the Scottish Parliament the right to choose a different sovereign: nay, unless certain commercial advantages were conceded, they compelled such a choice. As a menace to England, they directed that the Scotch people should be universally drilled and trained to the use of arms. Anne, under the advice of Godolphin, gave her assent. When it was given, the Act was safe beyond the power of the British Parliament. To put the Lord Treasurer's head in a basket (as Wharton is said to have suggested) would have been of little use.

The condition that before a Bill could become an Act of

Appendix. the Irish Parliament, it should be returned under the British

Note T. Great Seal, was in addition to the condition of the Royal Assent being given in Ireland. (See *Irish Debates*, vol. ix., p. 55).

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NOTE U.

Note U. Lord Shelburne replied to the Duke of Portland's letter of June 6, 1782 (page 121, *supra*), by stating the satisfaction it would give the King. 'Let,' he says, 'the two kingdoms be one, which can only be by Ireland now acknowledging the superintending power and supremacy to be where Nature has placed it' (Shelburne to Portland, June 9). When, however, the Duke of Portland found it useless to propose restrictions on the legislative power conceded, no hint was given that restrictions had been desired.

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NOTE V.

Note V. Pitt, in his letter to the Duke of Portland respecting the first set of Commercial Propositions, seems to treat them as at least in some degree constitutional in character; and again, in 1799, he did the same; for he then argued that by advocating them in 1785, Foster admitted that the Constitution of 1782 required to be supplemented, and was therefore not final. But Foster seems more accurate in regarding them as merely commercial. A permanent treaty on commercial matters between Great Britain and Ireland might have the same effect as if the Parliament of the latter was by its Constitution disabled from interfering with these subjects: still that does not change the nature of the proceeding, or make it an actual alteration in the Constitution. (See Foster's Speech, Feb. 11, 1799.)

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## NOTE W.

## Appendix.

During the controversies respecting the rights of the Irish Note W. Parliament, the relations existing between the Scottish and English Parliaments were naturally referred to. Ireland was a separate kingdom, such as Scotland had been before 1707, and therefore, it was argued, the Parliament of Ireland was entitled to the same independence as the Parliament of Scotland then possessed. After the Scottish Parliament had resigned its independence, and was incorporated with the English Parliament, its example was cited, so long as the Union was unpopular in Scotland, to discourage, and, when it became popular, to recommend, a similar measure for Ireland.

Historians seem to agree that the people of Scotland, outside Parliament, were opposed to the Union. Smollett describes their resentment as rising to transports of fury and revenge (*History of England*, A.D. 1706). Burton says, 'the popular preponderance was undoubtedly on the side of the Opposition' (*History of Scotland*, ed. 1873, vol. viii., p. 140); and Sir Walter Scott mentions one fact quite decisive on the point—that while the table of Parliament was loaded with addresses against Union, only one could be procured in its favour from a few persons in the Burgh of Ayr (*Works*, vol. xxv., p. 80). In the Scottish Parliament (which was a convention of estates, Peers, and Commoners sitting and debating together) the principal support of the measure came, according to Burnet, from the Peers (*Own Time*, A.D. 1706). There was, however, a majority for it of representatives of counties, and also of representatives of towns. Whether to procure the votes which in each estate turned the scale corrupt inducements were not had recourse to is disputed; but there is no doubt that at the time the almost universal opinion was that they were.

It is, therefore, by no means surprising—Union being itself unpopular, and the means by which it was accomplished being supposed to be of this character—that discontent became generally prevalent among the Scottish people. 'The

Appendix. nation' (says Sir Walter Scott), 'instead of regarding the Union as an identification of the interests of both kingdoms, considered it as a total surrender of their independence, by their false and corrupted statesmen, into the hand of their proud and powerful rival.' (*Works*, vol. xxv., p. 103.)

Note W.

These sentiments were industriously kept alive by the adherents of the Stuart family. For their purposes it was absolutely indispensable to get rid of the Act of Union, since upon the provision contained in it, which entailed the Crown of the United Kingdom of Great Britain upon the Princess Sophia and her descendants, was founded, so far as Scotland was concerned, the title of the House of Hanover. The Jacobites in this course were also impelled by observing that nothing brought more recruits to their cause than the agitation of the question, many holding that in restoring the Stuarts lay the best chance of regaining national independence.

Until after 1745 there cannot be said to have been any change of public opinion in Scotland; nor consequently did there until then exist that general contented acquiescence in the established system of government, which is essential before men can be induced steadfastly to follow the pursuits of industry. 'The air' (observes Burton) 'had to be cleared of mischief before men's minds could set freely and heartily to the great function of national industrial progress.' The events of 1745 fixed the title of the House of Hanover and the authority of the Parliament of the United Kingdom of Great Britain upon a basis not to be shaken: and thenceforward the energies and enterprize of the country were directed to promote the advancement of its wealth and prosperity, without disturbance from any rival attraction or interruption. (See Scott, vol. xxv., pp. 104-5; Burton, ed. 1853, chap. xxi.; and Buckle's *Civilization of Europe*, ed. 1872, ch. iii., p. 159.)

The career of improvement once commenced continued. Scotland, which at the end of the seventeenth century had been poor and depressed, was at the end of the eighteenth century one of the most prosperous countries in Europe. Dundas, therefore, when advocating the Irish Union, was able

to refer to the union of Scotland as a completely successful Appendix. measure. Not one of Queen Anne's prophecies, as expressed Note W, in her message to the Scottish Parliament, had, he said, been falsified. These were, that Union would secure for the Scottish people their religion, liberty, and property, remove animosities among themselves, and jealousies and differences with England; that it would increase their strength, riches, and trade; that as a consequence the whole island, freed from apprehension of different interests, would be able to resist its enemies, and maintain the liberties of Europe. (Speech of Dundas, February 7, 1799.)

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NOTE X.

The writers referred to during the debates upon the Union Note X. as having recommended it were Adam Smith (cited by William Smith, afterwards Baron Smith); Sir Matthew Decker, author of an *Essay on the causes of the Decline of Foreign Trade*; Sir Josiah Child, author of the *New Discourse of Trade* (both cited by Addington, Speaker of the English House of Commons); and Tucker, Dean of Gloucester (cited by Lord Lansdowne, better known as Shelburne). Montesquieu's opinion (cited at page 137, *supra*) was expressed to Lord Charlemont, and was first published in Hardy's *Life of Charlemont*, after the date of the debates. It could not, therefore, have been known beyond the small but brilliant circle in Ireland intimate with this nobleman.

In connection with the subject of the present note, it deserves to be noticed that in 1786 a new edition of De Foe's *History of the Union of Scotland with England* was published in London, edited by George Chalmers, which contained preliminary strictures on the state of Ireland, and advocated for Ireland a measure similar to that enacted for Scotland.

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Appendix.

## NOTE Y.

**Note Y.** In November, 1792, when Union was suggested as a means to Catholic Emancipation, the success which in the next year attended a proposition made by the Government, that Irish Catholics should be admitted to vote for members of the House of Commons, does not seem to have been anticipated. The difficulties, however, in the way of opening to them the right to sit in Parliament were much greater than those which delayed admission to the franchise, and down to the Union little progress had been made in overcoming them. The last time at which the question was raised in the Irish Parliament was 17th February, 1797, when Grattan moved in the House of Commons a resolution 'that the admission of persons professing the Roman Catholic religion to seats in Parliament is consistent with the safety of the Crown, and the connection of Great Britain with Ireland'; and the House divided—19 for, and 143 against.

## NOTE Z.

**Note Z.** Before Lord Cornwallis came to Ireland, the only indication that the Government desired Union was the pamphlet of Edward Cooke, M.P., Under-Secretary to the Lord Lieutenant (mentioned in the note to page 181, *supra*). It was published in the spring of 1798. Although anonymous, it was at the time known to be Cooke's, and it was supposed to have been written at the suggestion of his superiors in office. After Lord Cornwallis had arrived (June, 1798), the first allusion to Union in his correspondence is in a letter to Pitt (July 20, 1798). In this he says: . . . 'How or when to bring forward, or even broach the great point of ultimate settlement (*i.e.* Union) is a matter in which I cannot see the most distant encouragement.'

In September, 1798, Lord Camden (who had preceded Lord Cornwallis as Lord Lieutenant) wrote to Lord Castlereagh: <sup>Note Z.</sup> . . . 'The King and everyone of his ministers are inclined to a Union, and it will certainly be taken into consideration here, and you will probably hear from the D[uke] of P[ortland] upon it.'

By the 26th of the same month it would seem that an actual decision had been come to; for on that date Mr. Marshall (private secretary to Pelham, the Chief Secretary, then in London) wrote to Lord Castlereagh: . . . 'The Union is to be brought forward, and the leading points of it are now under consideration.' On the 8th October Lord Clare went to London to assist in the consideration of the measure to be introduced, and opposed any concession to the Catholics, 'which (he said), if made part of the Bill, would swamp it.' (*Cas. Cor.*, vol. i., pp. 378, 393.)

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NOTE AA.

The design of this treatise precludes examination of the Note AA. proceedings and general policy of the Irish Government while Lord Cornwallis and Lord Castlereagh were the Lord Lieutenant and Chief Secretary.

With respect to the capacity of Lord Castlereagh—as a statesman—there exists a remarkable testimony from Sir Robert Peel: . . . 'You well know,' he writes to the third Marquis of Londonderry, 'that no vindication of your brother's memory was necessary for my satisfaction; that my admiration of his character is too firmly rooted to be shaken by criticisms or phrases, and cavils at particular acts selected from a long political career. I doubt whether any public man (except the Duke of Wellington), who has appeared within the last half century, possessed that combination of qualities, intellectual and moral, which would have enabled him to effect, under the same circumstances,

Appendix. what Lord Londonderry\* did effect in regard to the Union  
 Note A.A. with Ireland, and to the great political transactions of  
 1813, 1814, and 1815.' (*Castlereagh Correspondence*, vol. i.,  
 p. 130.)

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NOTE BB.

Note BB. Beside the questions of the Commercial Propositions and of the Regency, a disagreement between the Irish Parliament and Portugal, in 1782, has been cited as an illustration of the danger which might have resulted from the power of independent action upon the part of the Irish Parliament. The dispute was respecting the admission of Irish wool into Portugal, which was demanded for Ireland, and refused by Portugal. This, it has been observed, might have led to the relations of Great Britain with a friendly power being disturbed.

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NOTE CC.

Note CC. That Union would not serve Irish trade was argued not only upon the ground that an Imperial Parliament, having a majority in both Houses, composed of English and Scotch persons, might, and when there was no Legislature in Ireland to keep it in check, probably would, revoke the commercial privileges that had been conceded in 1780, but also upon the

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\* Before his death, Lord Castlereagh had become Marquis of Londonderry. With Peel's estimate of him may be compared the sketch by Thiers (vol. xvii., p. 499), describing him as he appeared at the headquarters of the allied Sovereigns in 1814:—'Lord Castlereagh issu d'une famille irlandaise, ardente et energique, portait en lui cette disposition héréditaire, mais tempérée par une reason supérieure. Esprit droit et pénétrant, caractère prudent et ferme, capable tout à la fois de vigueur et de management, ayant dans ses manières la simplicité fière des Anglais, il était appelé à exercer, et il exerça en effet la plus grande influence.'

suggestion that it was likely to abolish the duties which pro- Appendix.  
 tected Irish manufactures. 'All the policy,' said Grattan, <sup>Note CC.</sup>  
 'of nursing our growing fabrics, and thereby of improving  
 the industry of our country, employing her children, and  
 expending her wealth upon her own labour, is now aban-  
 doned, and the language of the Union is, buy where you  
 can, and as cheap as you can.' (Speech, March 19, 1800.)

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NOTE DD.

Before Lord Townsend's Viceroyalty (1767-1772) the Note DD.  
 British Government relied for the management of the Irish  
 Parliament upon the heads of the aristocratic families of most  
 power and influence in the country. Lord Townsend aimed  
 at breaking down this system, and from his time the direct  
 use of patronage and other corrupt means of gaining over  
 Peers and Commoners was adopted. There is preserved at  
 Nuneham Courtenay, the seat of the Harcourt family in Ox-  
 fordshire, among the papers of Lord Harcourt—the Lord  
 Lieutenant who succeeded Lord Townsend—a list of the  
 members of the Irish Houses of Lords and Commons, and  
 opposite each an account of the favours asked by him, the  
 favours conferred upon him or his family and connexions by  
 former Governments, and his conduct in Parliament. It has  
 been printed in a most interesting collection of the *Harcourt  
 Papers*, published for private circulation by Colonel Harcourt  
 of Nuneham Courtenay (vol. x., p. 287). After 1782, the use  
 of indirect means of influencing the Irish Parliament was  
 continued. About 1789 (says Lecky, *History*, vol. vi., p. 429),  
 'corruption of the most wholesale description was had re-  
 course to.' (See also three speeches of Grattan in February,  
 1790.)

Appendix.

## NOTE E E.

Note E E. After the Government had been defeated on the question of Union in 1799, Lord Castlereagh pointed out, in a letter to the Duke of Portland, the private interests injuriously affected by the proposition. At that time it seems to have been intended to give but one member to a county, and to retain a much larger number of boroughs than were afterwards preserved. He then estimated the loss to owners of boroughs at £756,000; to persons connected with counties at £224,000; to barristers at £200,000; to purchasers of seats for the existing Parliament at £75,000; to the city of Dublin, which would suffer by the non-residence of the gentry, and consequent depreciation of house property, at £200,000. He advised to compensate the owners of boroughs and to give two members to the counties. (*Castlereagh Correspondence*, vol. ii., p. 151.)

## NOTE F F.

Note F F. When, in 1785, Pitt brought before the British House of Commons proposals for Reform in the representation of the people, he contemplated that a certain number of decayed boroughs should be induced to apply for disfranchisement, and his plan gave compensation for their abolition to those interested in them. He defended the provision for compensation on the following grounds:—'. . . A reform, he said, could only be brought about by two means—by an act of power, or by an adequate consideration which might induce bodies or individuals to part with rights which they considered as a species of valuable inheritance or of personal property. To a reform by violence he and, he was sensible, many others had an insurmountable objection; but he considered a reform in the representation of the people an object of such value and importance, that he did not hesitate, in his own mind, to propose and to recommend to the house the establishment

of a fund for the purpose of purchasing the franchise of such Appendix.  
 boroughs as might be inclined to accept it under the circum- <sup>Note F F.</sup>  
 stances which he had mentioned. It might be asked what  
 consideration could be for such a franchise. He knew there  
 was a sort of squeamish and maiden coyness about the House  
 in talking on this subject. They were not very ready to talk  
 in that House on what, at the same time, it was pretty well  
 understood out of doors, they had no great objection to  
 negotiate, the purchase and sale of seats. But he would  
 fairly ask gentlemen if these franchises were not capable of  
 being appreciated ?' (*Collected Speeches*, vol. i., p. 232.)

At the time of the Union the sale of seats in the House of  
 Commons was, both in Great Britain and Ireland, open and  
 notorious. The proprietor of a borough regarded his power  
 of nominating as a property, and dealt with it as he would  
 with any other kind of property, in whatever manner his  
 interest or inclination prompted. The Ministry and the  
 Opposition competed for the seats in nomination boroughs.  
 Thus, in 1807 (as appears from *Romilly's Diary*, vol. ii.,  
 p. 206), the Ministry bought up all the seats in the market ;  
 and Tierney, for the Opposition, in vain offered £10,000 for  
 the two seats at Westbury, of which trustees for creditors  
 were then disposing.

In 1809, an Act (49 Geo. III. c. 118) was passed, which  
 imposed penalties for corrupt agreements for the return of  
 members, whether for money, office, or other consideration.  
 Notwithstanding, the traffic in seats seems to have continued,  
 but necessarily secretly. If it was detected, the parties con-  
 cerned were liable (as was pointed out by Lord Campbell in  
 his speech on the Reform Bill) to be prosecuted. Whether  
 obeyed or not, the Act altered the position of the owners of  
 boroughs. If they derived a revenue from nominating to seats,  
 it was an illegal revenue. From the time of the Act, public  
 opinion went with its policy, and, in 1832, so completely  
 coincided with it, that the Reform Bill was carried without  
 compensation to the owners of disfranchised boroughs.

## Appendix.

## NOTE G G.

**Note G G.** At the time of the Union all the Irish boroughs returned each two members to the House of Commons. The money value set upon a borough for the purpose of compensation was £15,000. It does not seem to have been in excess of the real market price. Even in 1775, the price for a seat for a Parliament was not less than £2000. Referring to the Parliament then summoned, Sir John Blaquiére, Secretary to the Lord Lieutenant, wrote to Mr. Robinson, Secretary to the Treasury in England:—‘Seats in the new Parliament cannot be purchased at less than from 2000 guineas to £2500’ (Letter, 2nd Nov., 1775, in the *Harcourt Papers*). In 1793, the price of a seat, according to Grattan, had risen to £3000; and, in 1799, Lord Castlereagh thought £4000 had been paid for seats in that Parliament. (See *Irish Parl. Debates*, xiii., p. 162, and *Castlereagh Correspondence*, vol. ii., p. 150). Dr. Dunbar Ingram, in his *History of the Legislative Union* (p. 179)—where the question of compensation for boroughs and the proceedings connected with it at the time of the Union is examined at length—cites, in addition to the foregoing statements of Grattan and Castlereagh, an estimate by Grattan of the value of a borough in 1797 at from £14,000 to £16,000.

## NOTE H H.

**Note H H.** The Act of Union did not contain any provision for relieving the Irish Catholics from their disabilities; but there is no doubt that Pitt intended it should be followed by Acts of the Imperial Parliament to effect that purpose, and to make provision for their clergy. In this policy he had the aid of Dundas, Castlereagh, and Canning—the members of his Ministry who seem to have taken most interest in Irish affairs. The failure of Pitt's design seems due solely to the opposition of the King, who held that concession of political power to members of the Church of Rome was inconsistent with the principles which had placed his family upon the throne, and a breach of the Coronation Oath—

opinions in which he was unfortunately encouraged by one Appendix. whose office gave especial weight to his advice, the Chan- Note HH. cellor of England, Lord Loughborough.

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NOTE J J.

Jebb's pamphlet (mentioned at page 181), was referred to Note J J. by Cooke, the Under-Secretary to the Lord Lieutenant, in a letter to Lord Castlereagh, in the following terms:—'. . . I think Jebb's pamphlet very favourable to the cause. It is cried up here, and talked of: it admits all that is wanted. He is against an Irish Parliament with Imperial powers, and for a Parliament with local and municipal powers. The question is reduced to this—which is preferable? One Parliament for the empire, chosen from all its parts, or the cutting down the Union (an incorrect expression for the Irish Parliament) to the power of a Grand Jury.' (*Castlereagh Correspondence*, vol. ii., p. 50.)

Jebb's pamphlet was published about a month before Sheridan spoke against the idea of an Irish Parliament merely for local affairs, and designated such a Parliament a sort of Vestry (see page 181, *supra*), and it may therefore have been present to his mind. At a later date (22nd April, 1799), it was distinctly alluded to by Canning. He characterized it as 'one of the best-written pamphlets on the side of the question which it espoused,' and then proceeded to argue against the supposition which Jebb and others seemed to entertain—that the settlement or security aimed at by Union could be equally well provided by an arrangement between the two separate and independent Parliaments, without trenching upon the free will and independence of either. 'With this,' said Canning, 'I am so far from agreeing, that I could almost be satisfied to rest the whole question on this point singly, and to give up the plan of Union altogether, if it does not appear plain that there can be no mode of arrangement devised for the several possible differences and disagreements between the two kingdoms, short of Union,



**Appendix.** which will not take away from the Parliament of Ireland even the shadow of independence, and deprive it of all freedom and dignity in the points the most essential to its very being as a Parliament.' He illustrated this assertion by the position in which the Irish Parliament would be placed under a limited system, in respect of one of its most important functions—voting supplies—to which it would have to contribute proportionally, without any power to give or withhold—a position, he said, consistent with the Irish House of Commons being 'a grave and respectable council,' but not 'a House of Commons according to the genuine spirit of the British Constitution.'

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**NOTE K K.**

**NOTE K K.** The question as to the power of a Parliament to unite itself and the kingdom for which it legislates with another Parliament and kingdom was raised at the time of the Scottish Union. The jurisdiction to do so was then denied, much upon the same grounds as it was afterwards controverted in the Irish Parliament. 'The members of a Legislature,' said a protest drawn up at that time, 'are mere temporary administrators of their trust, and not the owners or masters of a people. They are not entitled to bargain away the nation they represent, or make it cease to exist.' (Stanhope's *History*, 3rd ed., chap. 8, p. 260.)

In the debates on the Irish Union it was pointed out by William Smith (afterwards a Baron of the Irish Court of Exchequer), that other serious consequences beside the union of the kingdoms might depend on the validity of the Scotch Act of Union. That Act constituted the heirs of the Princess Sophia Sovereigns of the new United Kingdom of Great Britain; but none had conferred on them the Crown of Scotland as a separate kingdom. Under the Security Act this could have been done upon Anne's death, but no Scotch Parliament then existed. In the line of descent the House of Hanover was not next to the Pretender and his issue; and the legislation, which, in England, disqualified those prior, if Catholic, had not been enacted in Scotland.

The principal legal authorities for the power of the Scottish Parliament to contract for Union were Somers, who, Burnet (*Own Time*, iv. 137-144) says, had the chief hand in projecting the scheme, and was its advocate in the British House of Lords; and Blackstone, whose Commentaries were published some years before the Irish debates. 'Parliament,' the latter lays down, 'hath sovereign and uncontrollable authority, and is the place where that absolute despotic power, which must in all governments reside somewhere, is entrusted by the Constitution of this kingdom. It can alter the Constitution of the kingdom, and of Parliament itself, as was done by the Act of Union' (referring to the Scottish Union). Appendix.  
Note KK.

In the discussions respecting the Irish Union, Saurin (who afterwards refused high legal office), Plunket (afterwards Lord Chancellor of Ireland), and Bushe (afterwards Chief Justice of Ireland), argued against the power of the Irish Parliament to contract for an Union. Mitford (afterwards, as Lord Redesdale, Chancellor of Ireland) and Grant (afterwards Sir William Grant, Master of the Rolls in England) argued for the power. The three Chiefs of the law courts in Ireland were all Irish Peers, and, sitting in the Irish House of Lords, pronounced for the power. On the same side are to be reckoned the English Chancellor, Lord Loughborough, and the Irish Chancellor, Lord Clare.

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NOTE L L.

At the time of the Union all the seats in the counties were open; but in the cities and boroughs in not more, it is said, than twelve. This would give only 88 open seats. Thus 106 boroughs, or 212 seats, were nominated to, or subject to influence, nearly equivalent to nomination. (See a tabular classification of the boroughs, with the names of the persons who commanded their returns, in *Plowden*, vol. ii., Appendix No. xcvi.) Note LL.

But as some proprietors of boroughs owned several seats, the number of persons who practically controlled the repre-

Appendix. sentation of Ireland did not amount even to the same number as the close seats. Grattan, in 1794—speaking on the necessity of parliamentary reform, and after Catholics were permitted to vote for members—says that less than ninety persons, he believed about forty, returned a majority of the members of the House of Commons. (See Speech, 4th March, 1794.) Massey (on the authority of Lord Bolton's MSS.), says 126 seats were, in 1784, divided between some five-and-twenty persons (*History*, vol. iii., p. 264).

This state of the representation in the House of Commons is to be kept in mind, not merely when examining the question of dissolving Parliament in 1799, but when considering generally the position of the question of Union in the Irish Parliament. The members returned by the counties were landowners; the members returned for most of the boroughs were landowners or the nominees of landowners; and these landowners for the most part derived their titles from the settlements of landed property under Charles II. and William III.—settlements respecting whose stability, if the local Parliament were retained, and (as might reasonably be expected) reformed, there was much apprehension prevalent. These circumstances impelled to the closest connexion with Great Britain; while others, such as community of race, agreement with the British Parliament in religion and in general tone of thought and opinion, tended to render the connexion attractive. Sentiments of nationality have unquestionably deep and extensive influence in a community; but they are capable of being, and often are, counteracted by tendencies that lead to a policy of centralization—what, for want of a more accurate term, is sometimes designated imperialism. None of these considerations are to be left out of account in estimating the motives contributing to recommend the Union. And when the weight of authority at that time conceded to the King's Government—quite irrespective of any use of corrupt inducements—is also remembered, a dispassionate judgment will probably feel less surprise that a majority was gained over in the Commons to the Ministerial policy than that so large a minority was to the last arrayed against it.

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## ERRATA.

Page 47, in note, *after* 'most of those,' *insert* 'omitted.'

Page 96, note, *for* 1758 *read* 1720.

Pages 125-134, the figures in the head-line should be 1785, not, as printed, 1782.

Page 137, in first note substitute xxv. for xxiv.

Page 141, in the note substitute Y for G.











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